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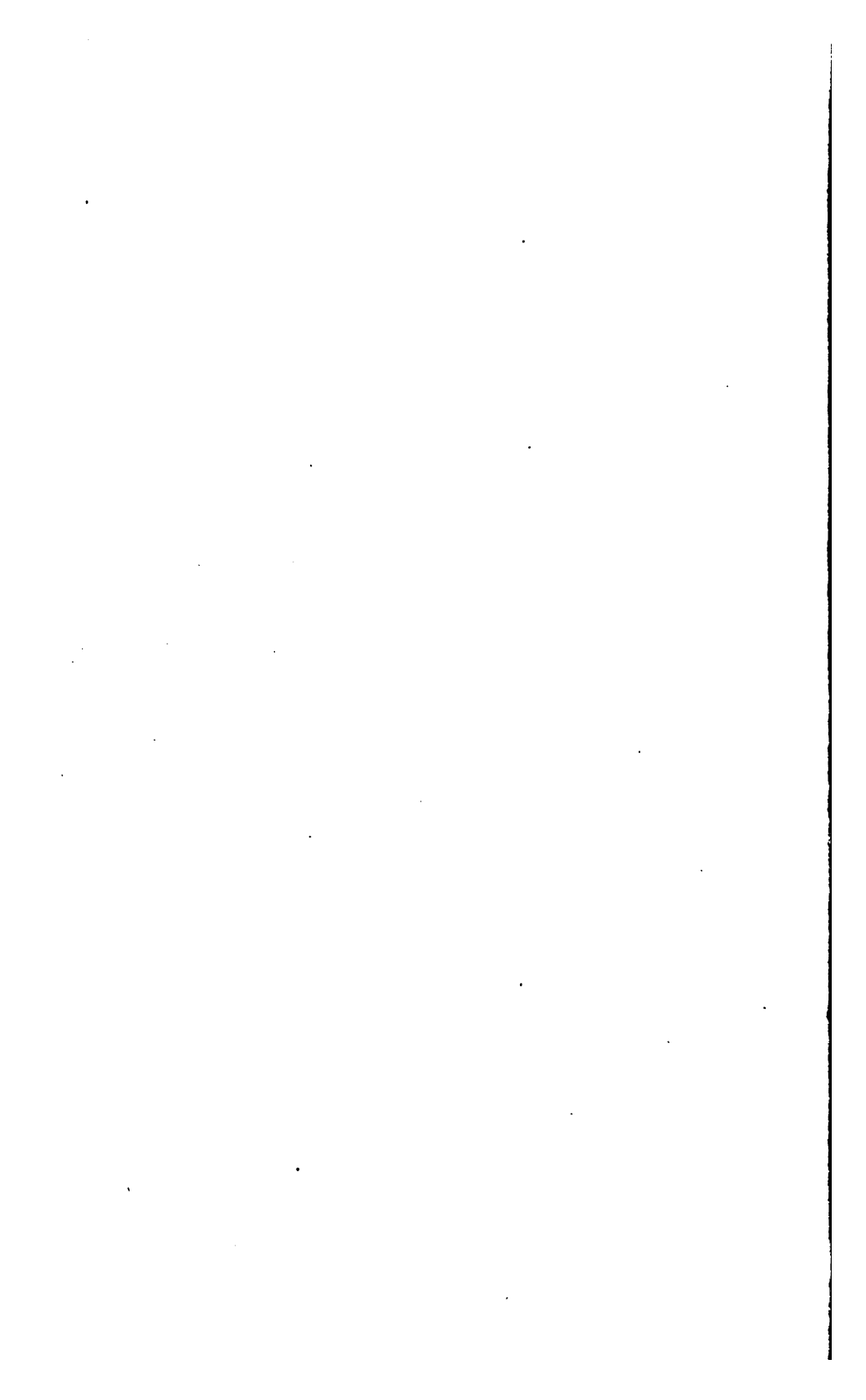


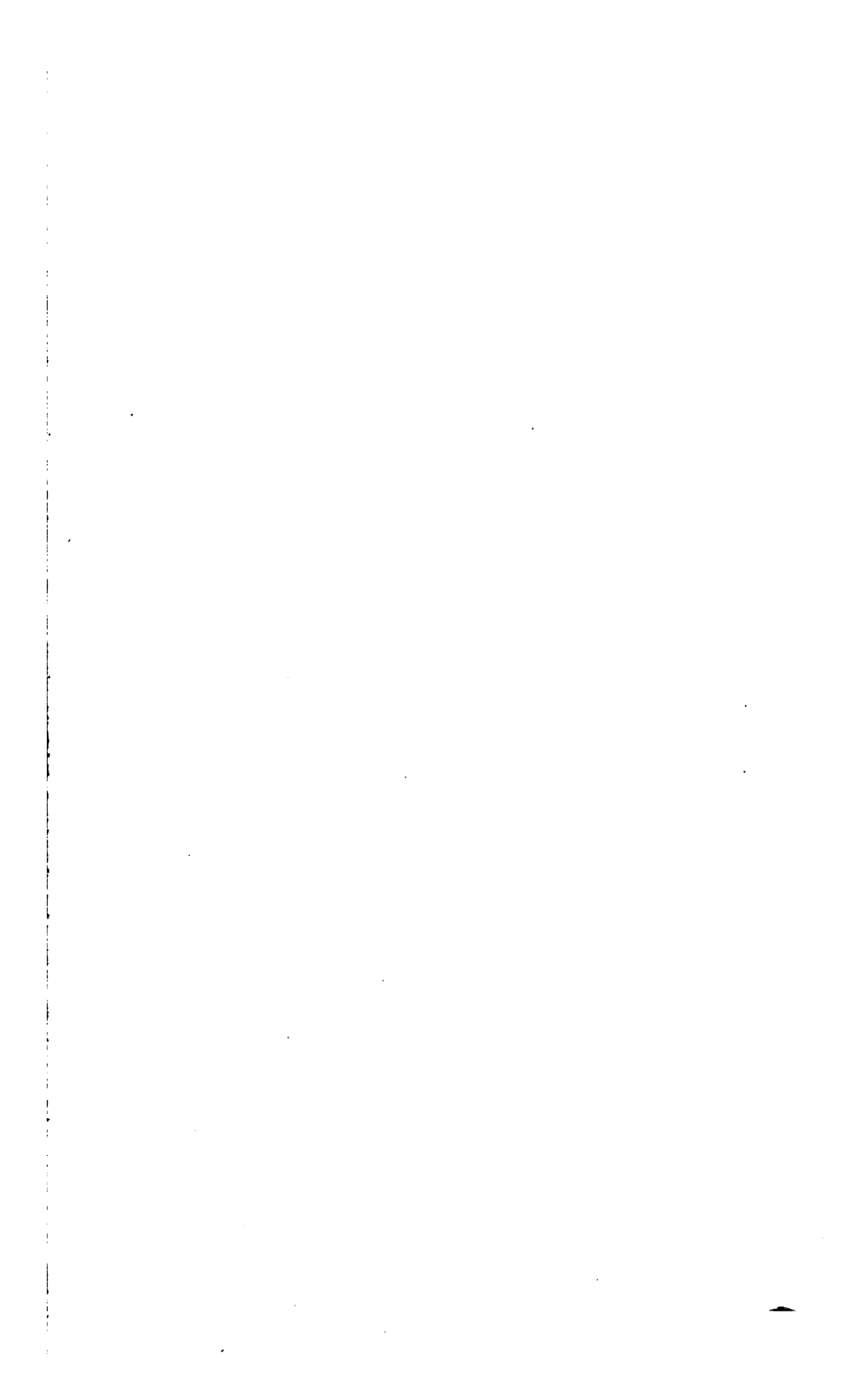






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*W. Hands*

A  
PRACTICAL TREATISE  
ON  
**FINES AND RECOVERIES,**  
IN THE  
**Court of Common Pleas ;**  
WITH  
AN APPENDIX,  
CONTAINING  
THE RULES AND ORDERS OF COURT  
RELATING TO  
FINES AND RECOVERIES :  
AND  
A Copious Collection of Precedents of the several Proceedings  
IN LEVYING, SUFFERING, AND PERFECTING THEM.

---

By **WILLIAM HANDS, GENT.**

---

**THE FOURTH EDITION,**  
CORRECTED ; AND CONSIDERABLY ALTERED AND ENLARGED.

---

LONDON :  
**JOSEPH BUTTERWORTH AND SON,**  
43, FLEET-STREET.  
1825.

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## ADVERTISEMENT

*TO THIS FOURTH EDITION.*

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**THE** Third Edition of this Work having been some time out of print, and a new one required, considerable pains have been taken to render the present Edition more correct and useful.

The whole of the Treatise has been remodelled, and a large addition of matter introduced without increasing the actual size of the book. As it is professedly designed to be of practical utility, a more copious statement has been given of the cases relating to the amendment of Fines and Recoveries, and the Rules and orders of Court, regulating the mode of levying and suffering them, have been substituted for several of the forms which appeared redundant in the former Editions. It is presumed that, upon the whole, the book will be found to describe more clearly the several stages through which Fines and Recoveries have to be passed, from their commencement to their completion ; and at the same time to contain a

more comprehensive account of the nature and operation of those important records of title to real property, forming a compendium of information to the younger student, which he may amplify with advantage from the more elaborate Treatises upon the subject which are extant.

*London, Trinity Vacation, 1825.*

## PREFACE

### TO THE FIRST EDITION.

---

**ALTHOUGH** there are annually some hundreds of Fines levied and Recoveries suffered in the Court of Common Pleas at Westminster; yet, it not having appeared to the Compiler that any of the books of practice, or treatises on Fines and Recoveries, shew sufficiently the *modern* practice of passing them, he conceived the pointing out the *present* mode of levying the one and suffering the other would assist the junior practitioner, and enable him to conduct with ease and accuracy this part of his business. Indeed, the inconvenience which the Compiler himself felt, not only during his clerkship, but also in the early part of his practice as an agent, and otherwise, for want of such a directory, induced him to attempt the elucidation of the subject in the following sheets; and should it prove in the least degree useful to any part of that branch of the Profession of which he himself is a member, he will have arrived at the end he aimed at. But here he cannot refrain

from returning the Gentlemen at the different offices his sincere thanks for their liberal communications to him on the subject; and he begs leave to inform the Reader, that if any utility be found in the Compilation, the merit of it belongs to them, and not to the Compiler. As to the inaccuracies which may have escaped the Compiler's attention, he trusts the Profession will view them with their accustomed indulgence.

## ADVERTISEMENT

### *TO THE SECOND EDITION.*

---

**THE** Compiler trusts this Edition will be favoured with the indulgence which the former received. He has, however, endeavoured to make it as little exceptionable, and as much useful, as the further assistance of his professional friends and his own experience have enabled him ; by correcting whatever, on examination, appeared to require it, and adding, what he presumes will be found, much useful matter.

Where the following pages are supported by authorities in print, the Compiler has referred to one of them, the latest he met with on the point ; more he conceived unnecessary : where no authority is cited, the Reader will please to consider such part as the result either of official communication, or the Compiler's own experience.

The former impression having been so favourably received as to have been out of print several

years, and another long since called for, the present one would have made its appearance much earlier, had not some domestic misfortunes and other adverse circumstances prevented the Compiler's earlier attention to it.

Here he must take the liberty of again returning his sincere thanks to the Gentlemen of the different offices for their very free communications to him on the subject ; and to repeat that it is to them the Reader is principally indebted for the utility that may be found in the Compilation.



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A  
**PRACTICAL TREATISE**  
ON  
**FINES AND RECOVERIES.**

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CHAP. I.

ON THE NATURE, SEVERAL KINDS, AND EFFECT OF  
FINES.

**A** FINE is so called because it puts an *end* to all controversies concerning the matters comprized in it, as well between parties and privies thereto, as against all others not claiming in due time. (*a*) It is sometimes said to be a feoffment of record; (*b*) though it may with more accuracy be called an acknowledgment of a feoffment on record, by which is to be understood that it has at least the same force and effect with a feoffment in conveying and assuring of lands and

Of the nature of a fine.

(*a*) Touchstone, c. 2.

(*b*) Co. Litt. 50.

hereditaments. But more particularly a fine may be described to be an amicable composition or agreement of a suit, whether real or fictitious, between the parties with the consent of the judges, and inrolled among the records of the Court, by which lands and tenements are transferred from one person to another, or any other settlement is made respecting them. (c) To this mode of transferring estates of freehold the ceremony of livery of seisin is unnecessary, because lands acquired in this manner were supposed to be recovered by sentence of a Court of justice ; and the possession was delivered by the sheriff, in pursuance of a writ directed to him for that purpose, which was equal in point of notoriety to livery of seisin. It was founded in its original on an actual suit, commenced at law for the recovery of possession of lands or other hereditaments : and the possession thus gained by such composition proved to be so secure and effectual, that fictitious actions were, and continue to be, every day commenced for the sake of obtaining the same security. Fines are of high antiquity ; the statute 18 Ed. I. st. 4, therefore, called *modus levandi fines* did not create them, but only declared and regulated the manner in which they should be carried on ; and since the

(c) 2 Comm. ch. 2. 5 Cruise, tit. 35. ch. 1. 1 Prest. Con. 200.

passing of this act, no material alteration has been made in the manner of levying fines. (d)

A fine consists of five parts. 1. The original writ. 2. The *licentia concordandi*, or leave to agree the suit. 3. The concord or agreement itself. 4. The note. 5. The foot, *chirograph*, or indenture. Parts of a fine.

1. When the parties have agreed to levy a fine, the plaintiff, or party to whom the land is to be conveyed or assured, commences an action or suit against the other (who is termed the deforçant,) by suing out a writ of covenant (e) against him, the foundation of which is a supposed agreement or covenant, that the one shall convey the lands to the other, on the breach of which agreement the action is brought. A fine, being a friendly composition of a suit actually commenced, cannot be levied without an original writ, because no suit can be otherwise brought in any of the courts of Common law. Upon the writ of covenant there is due to the king by ancient prerogative a fine called the *primer fine*, (f) for in every real action for lands and tenements, above the yearly value of five marks, there is due a fine of six shillings and eight-pence for every

(d) 2 Comm. ch. 21.

(f) 2 Inst. 511. Booth. 247.

(e) See Append. XXXV.

five marks of the yearly value of the land upon the original in the Hanaper office. 2. The *licentia concordandi* is the leave given by the Crown to compromise the suit. (g) For as soon as the action is brought the deforçant, knowing himself to be in the wrong, is supposed to make overtures of accommodation to the plaintiff who accepts them ; but having given pledges to prosecute his suit which he endangers, if he now deserts it without licence, he applies to the Court for liberty to make the matter up. This is readily granted, upon another fine being paid to the king, called the *king's silver*, or sometimes the *post fine*, with reference to the *primer fine*. It is as much as the *primer fine*, and half as much more, that is, ten shillings for every five marks of land ; and is due to the king by his prerogative, as an ancient revenue of the Crown. If the plaintiff or deforçant die, before the king's silver be paid, and the writ of covenant be returnable, the fine is in general void ; because the parties are not supposed to appear before the return day of the writ of covenant, so that no agreement can take place between them previously to that period. (h) But when several persons are deforçants, and some of them die

(g) 5 Rep. 39. a.

(h) Cro. Eliz. 408. Comb.

57—71. 2 Lord R. 487.

Barnes 220. Wils. R.

Part II. 115. Hob. 330.

Dyer 220.b. 2 Vent. 47.

before the return of the writ of covenant, the fine may pass as to the survivors. The licence to accord is entered in the following manner : " Robert Drury gives to our Lord the King seven pounds for leave to accord with Thomas Tey, Esq., and Eleanor his wife of a plea of covenant of the manors, &c." This entry ought to contain the sum given for licence to compound ; the party who pays it, that is, the person in whom the fee is to be vested ; the plea, and between whom ; and the lands and hereditaments for which the fine is paid. (i) 3. The *concord* or agreement is the substance of the fine. It is usually an acknowledgment from the deforceants, or those who keep the other out of possession, that the lands in question are the right of the plaintiff ; and from this acknowledgment, or recognition of right thus made, the party who levies the fine is denominated the *cognizor*, and he to whom it is levied the *cognizee*. (k) The concord comes in lieu of the sentence, which would have been given if the parties had not compromised the cause ; and is therefore considered, and attended with the same consequences, as a judgment in an adversary suit. It can therefore be made of those things only, and to those per-

(i) *Tey's case*, 5 Rep. 39. a.  
See Append. LIV.

(k) For the several ways in

which this acknowledgment may be made, see App. LXVI. to LXXXV.

sons only, (with a few exceptions) (*l*) that are named in the original writ, on which the fine is levied ; because cognizance being in the nature of a judgment, binds only those persons and things that are judicially before the Court. And the object of fines being to settle the possession for ever, lands are not allowed to be limited in the concord of a fine to two persons *and their heirs* (except in gavelkind tenure) but to them and *the heirs of one of them.* (*m*) And for the same reason a warranty ought not to be allowed in the concord of a fine from two persons and their heirs. (*n*) Lands situated in different counties may be comprised in the same concord : but there must be a writ of covenant for each county. (*o*) 4. The *note* is an abstract of the writ of covenant and concord ; being the docquet taken by the chirographer, from which he draws up the indenture. (*p*) 5. The foot or *chirograph*, which is the conclusion, includes the whole matter ; reciting the parties, day, year, and place, and before whom it was acknowledged or levied. (*q*)

(*l*) As where a remainder is limited. Co. Read. 6. 11. 3 Rep. 39 b.

(*m*) Bro. Ab. tit. Fine 7. Co. Read. 8. 5 Rep. 38. *Seymour v. Barker*, 2 Taunt. 198. Rob. Gav.

132.

(*n*) Co. Read. 8.

(*o*) Dyer 227. 2 Inst. 512.

(*p*) 5 Rep. 39. See Append.

LIX.

(*q*) See Append. LVIII.

LXII.

Of this there are indentures made or engrossed at the chirographer's office, and delivered to the cognizor and cognizee ; beginning with these words, " This is the final agreement, &c." and then stating the whole proceeding at length. Thus the fine is, at common law, completely levied ; and it begins to operate from the return of the writ of covenant. (r) But in order to render the fine more universally public, and less liable to be levied by fraud or covin, further solemnities are super-added by several statutes. By 27 Edw. I. c. 1. the note of the fine must be openly read in the Court of Common Pleas, at two several days in one week ; and during such reading all pleas are to cease. By 5 Hen. II. c. 14. and 23 Eliz. c. 3. all the proceedings on fines, either at the time of acknowledgment, or previous or subsequent thereto, shall be enrolled of record in the Court of Common Pleas. By 1 Rich. III. c. 7., confirmed and enforced by 4 Hen. VII. c. 24., the fine after ingrossment is to be openly read and proclaimed in Court (during which all pleas are to cease) sixteen times, *viz.* four times in the term in which it is made, and four times in each of the three succeeding terms, which by 31 Eliz. c. 2. is reduced to once in each term. These proclamations are indorsed on the back of the

(r) Jenk. 250. 3 P. W. 170. 2 Bro. 711.

fine, and are considered as matters of record. It is also enacted by 23 Eliz. c. 3. that the chirographer of fines shall every term write out a Table of the fines levied in each county in that term, and shall affix them in some open part in the Court of Common Pleas all the next term : and shall also deliver the contents of such Table to the sheriff of every county, who shall at the next assizes fix the same in some open place in the Court, for the more public notoriety of the fine.

Of the several kinds of fines.

Since the stat. 4 Hen. VII. fines have been distinguished into fines at *common law*, and fines with proclamations, or *according to the statute*. It is in the election of every person who levies a fine to have it proclaimed in the usual manner ; and if the cognizee dies before the proclamations are made, his heirs may cause the fine to be proclaimed. (s) But it has long been the practice to proclaim every fine, (t) so that all fines now levied are fines according to the statute ; though if any of the proclamations appear not to have been made, or to have been made out of term, or on a Sunday or other *dies non juridicus*, the proclamations are reversible ; (u) and when they are reversed, the fine will only

(s) Dyer 254. a.

(t) *Per* the chirographer.

(u) *Fish v. Broket*, 2 Dyer

181. b.



operate as a fine at common law. (v) But if the fine be erroneous, the proclamations are void because the fine is the principal.—Fines may further be divided into four kinds;—*the first* of which is called a fine *sur cognizance de droit come ceo qu' il a de son done*, or a fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor. This is the best and surest kind of fine; for the deforçant, in order to keep his supposed covenant with the plaintiff of conveying to him the lands in question, and at the same time to avoid the formality of an actual feoffment with livery of seisin, acknowledges in Court a former feoffment or gift in possession to have been made by him to the plaintiff; so that it is rather an acknowledgment of a conveyance, than a conveyance originally made; for the deforçant acknowledges, *cognoscit*, the right to be in the plaintiff or cognizee, as that which he had *de son done* of the proper gift of himself the cognizor. (w) It passes an estate in fee simple without the word *heirs*, (x) unless the concord be qualified by express words of the parties, (y) for then lands may be limited to the cognizee for life or in tail. The *second* kind of fine is a

(v) *Butts v. Jennings*, 1 See Append. LXVI.

Buls. 206. Dyer 216, a. (x) 1 Inst. 9. b.

(w) 5 Cruise, 91. 3d Edit. (y) 1 Salk. 340.

*fine sur cognizance de droit tantum*, or acknowledgment of right merely; (z) not with the circumstance of a preceding gift from the cognizor. This is commonly used to pass a reversionary interest which is in the cognizor; for of such reversions there can be no feoffment or grant supposed, as the freehold and possession during the particular estate is vested in a third person. (a) It may also be used by a tenant for life, to make a surrender of his life estate to the person in remainder or reversion; and it is then called a fine upon surrender. (b) The *third* sort of fine is called a *fine sur concessit*; where the cognizor in order to make an end of all disputes, though he acknowledges no precedent right or gift, grants to the cognizee an estate *de novo* by way of supposed composition; which may be either an estate in fee, for life, or for years. (c) A *fine sur concessit* will not be allowed to be levied for the purpose of passing such estate as the party may have, by the description of "all and whatsoever he may have in the tenements." (d) The fourth sort of fine is called a *fine sur done, grant, and render*; (e) which is a double fine,

(z) 1 Rep. 97, a. See

Append. LXXI.

(a) Moor 629.

(b) Co. Read. 3.

(c) 5 Cruise 93. 3d Edit.

See Append. LXXVII.

(d) *Seymour v. Barker*, 2

Taunt. 198.

(e) See Append. LXXXV.

comprehending the fine *sur cognizance de droit come ceo*, and the fine *sur concessit*. It is used in order to create particular limitations of estates ; whereas the fine *sur cognizance de droit come ceo*, &c. conveys nothing but an absolute estate, either of inheritance, or at least of freehold : but in this last description of fine the cognizee, after the right is acknowledged, renders or grants back to the cognizor some other estate in the lands. (*f*) The fine *sur cognizance de droit come ceo*, &c. is most generally used, because it conveys a clear and absolute freehold, and gives the cognizee a seisin in law, without any actual livery ; it is therefore called a fine *executed*, whilst the others are only *executory*. The chief excellence of this fine, therefore, is, that it confirms and secures a suspicious title, and puts an end to all litigation after five years, where there is no disability : other conveyances and assurances admit an entry to be made upon the estate within twenty years, and in some instances the right may be disputed in a real action for sixty years afterwards. (*g*)

All judgments of Courts were, by the common law, allowed the utmost force in determining the rights of the contending parties ; therefore a fine being considered as a composition of a

Of the  
effect, and  
operation  
of a fine.

(*f*) 5 Cruise, 94. 3d Edit.    (*g*) Christian's Blackstone, c. 21.

suit actually commenced, and the concord of a fine equivalent to the sentence which would have been pronounced in case the parties had not agreed to terminate the suit, was allowed to have the same force and effect as a judgment in a real action. At this day the effect of fines depends principally upon the statute 4 Hen. VII. ch. 24. which directs the proclamations to be made as before stated. (h) The second section of the act is in these words, "And the said proclamations so had and made, the said fine to be a final end, and conclude as well privies as strangers to the same; except women covert, (other than be parties to the said fine) and every person then being within age of twenty-one years, in prison, or out of this realm, or not of whole mind, at the time of the said fine levied, not parties to such fine." By the united force of the 32 Hen. VIII. (which was professedly made for the purpose of explaining the stat. 4 Hen. VII.) and of the latter statute a fine levied by tenant in tail in possession, with proclamation will be an effectual bar to all his issue; because they are privy to him both in blood and estate, and can only make title to the estate tail as his sons. As a tenant in tail may convey his whole estate by fine, he may also create any less estate out of it, by fine; for instance, a term for

(h) *Ante*, p. 8.

years, (i) which will likewise bind his issue after his death. The stat. 4 Hen. VII. expressly excludes parties and privies from averring *quod partes finis nihil habuerunt*; and the 32 Hen. VIII. makes a fine levied of any lands entailed to the persons levying the same, or to any of his ancestors, a sufficient bar against such person and his heirs. A fine therefore with proclamations, duly levied by a person having the right of an entail in him, will be a good bar to his issue; although at the time when the fine was levied he had never entered on the estate tail. (k) In the case of a *lineal descent*, the issue in tail may be barred by the fine of his ancestor, although at the time of levying the fine the ancestor had only the possibility of an estate tail, which never took effect; because the issue, in making his title, must convey his descent through such ancestor which makes him a privy to him. (l) But this doctrine does not extend to cases of collateral descent. An estate-tail in a rent-charge may be barred by a fine levied of it; and a tenant in tail may also bar it, by levying a fine of the lands out of which the rent issues. (m) So a tenant in tail of an advowson in gross may bar his issue by a fine

(i) *Smith v. Stapleton*, (l) *Archer's case*, 3 Rep. 90. Plow. 430. *Grant's case*, 10 Rep. 50, a.

(k) *Zouch v. Bamfield*, 3 (m) *Heliot v. Saunders*, Cro. Rep. 88. 1 Leon. 75. Jac. 700, 1 Vex. 391.

levied according to the stat. 4 Hen. VII. (n) A fine by a tenant in tail of an equitable or trust estate will have as extensive an operation in barring his issue as if he had been seized of the legal estate. And although no fine will bar an estate tail but a fine levied with proclamations pursuant to the 4 Hen. VII. ; yet as soon as it is levied, even though the proclamations are not passed, it is a good bar to the estate tail, provided the proclamations are afterwards duly made ; and the issue in tail cannot save his right by entering before all the proclamations are made. (o) A fine however is merely a bar to an estate tail, but not to the remainders or reversions expectant on it ; for a fine levied by a tenant in tail only transfers to the cognizee a base fee ; that is, an estate to him and his heirs, as long as the tenant in tail has heirs of his body ; but does not bar the rights of persons in remainder or reversion provided they enter or claim in due time. But where a tenant in tail has the immediate reversion in fee in himself, he may make a good title by fine only, for the fine will merge the base fee which it creates, and bring the reversion into immediate possession. And any condition restraining the right to levy a fine of an estate tail pursuant to the above

(n) Plowden, 435.

(o) *Parslow's case*, cited 3 Rep. 90.

statutes is utterly void ; though not where the fine is merely at common law, which only operates as a discontinuance. (*p*) But no fine can be levied of any lands the owners whereof are restrained from alienation by express words in any act of parliament since the 4 Hen. VII., or where the lands have been granted by the Crown, by letters patent, or by act of parliament, the reversion whereof remains in the Crown, except such fine only as operates at common law. (*q*) Where a fine and nonclaim are pleaded, a court of law will not enter into any discussion of the title until that is accounted for ; (*r*) because the object of the statute 4 Hen. VII. is not confined to the enabling of tenants in tail to bar their issue ; but it was also designed to secure those who were in possession of lands against all dormant claims, the words of the statute being so extensive that they comprehend almost all persons, and nearly every kind of estate or interest in lands. (*s*) All those who are parties to a fine are immediately barred, even though they labour under disabilities, except infants ; and they are also barred unless the fine be reversed during the minority. Lay corporations who have an absolute estate in their posses-

(*p*) 1 Vent. 321.

Black. R. 1259.

(*q*) 32 Hen. 8. ch. 36. s. 3, 4.

(*s*) 5 Cruise, Tit. 35. c. 10.

(*r*) *Driver v. Lawrence*, 2

sions, and a power of alienation, may be barred by a fine and nonclaim: but not ecclesiastical corporations. Married women, by joining their husbands in levying fines, may bar themselves and the estates and interests whereof their husbands are seized in their right; and a fine or recovery is the only mode of passing the estate of a married woman. A fine will also bar her right to dower:—but if the fine be of lands, whereof the husband is seized in fee simple, without any declaration of uses, the use will result to the husband, and a new right to dower accrue in the wife. (t) A married woman may also bar herself of her jointure, by joining her husband in a fine of it. (u) The estate of a devisee may be barred by a fine and nonclaim, if the devisee have not entered on the lands devised. (v) Executors to whom lands are devised for payment of debts may also be barred by a fine levied of the lands so devised, if they do not make their claim in due time. (w) And a fine is a good bar to a trust as well as to a legal estate, (x) if the cognizee have no notice of the trust. (y) A *cestui que trust* in tail may, by a fine duly levied, bar his

(t) *Lampet's case*, 49. b.

(u) 1 Inst. 35. b. Dyer 358.

(v) *Hulme v. Heylock*, Cro.

Car. 200.

(w) 5 Rep 124. a.

(x) *Clifford v. Ashley*, 1 Ch.C. 268. *Salisbury v. Bagot*,  
ib. 278.

(y) Gilb. Ca. 62.

(z) 2 Cha. R. 78.



issue as fully as if he had the legal estate. (z) And where a married woman is entitled to a trust estate for her sole and separate use, she may bar it by joining with her husband in a fine. (a) Terms for years may also be barred by fine, if the lessees were, or ever might have been, in possession. (b) But not where the term is assigned in trust for the person who is seized and in possession of the inheritance. (c) Estates held by statute merchant, statute staple, and elegit, are comprehended within the statute 4 Hen VII. ; and may therefore be barred by a fine and nonclaim, provided the lands be extended. (d) Powers appendant, or in gross, (e) may likewise be destroyed by fine, unless it be declared by deed that the fine shall enure as an execution of the power ; for in that case the fine and declaration will be considered as one assurance. (f) But a power collateral to the land not being coupled with any interest, cannot be barred by a fine : (g) A right of entry for a condition broken may be

(z) 5 Rep. 124. (a.)

Mod. 217.

(a) *Penne v. Peacock*, Forrest. 41.

(e) 1 Inst. 247 a. 3 Rep. 83.

*Diggess' case*, 1 Rep. 173.

(b) *Saffyn's case*, 5 Rep. 123.

Forrest 41.

Cro. Jac. 60.

(f) *Carth. 22.* 1 Freem. 486.

(c) 2 Vent. 329. 1 Lev. 272.

Doug. 45.

3 Keb. 564.

(g) 1 Rep. 174. *Willis v.*

(d) *Ognel v. Arlington*, 1

*Shorrall*, 1 Atk. 474.

barred by a fine, levied by the grantee or devisee of the conditional estate; (*h*) and also a writ of error. (*i*) All those who have any present right or claim to lands whereof a fine has been levied are allowed five years, to be computed from the day on which the last proclamation was made, to make their claim. (*k*) And although there be no transmutation of possession, and the cognizor be in of an old use, yet after five years it will operate as a bar to all claims whatever. (*l*) All those to whom a right accrues, at any time after a fine has been levied, from any cause which existed before the fine was levied, are allowed five years, to be computed from the day on which their right first accrued, to make their claim. (*m*) If a husband levy a fine with proclamation of his wife's estate, she or her heirs may avoid it, by an entry within the first five years after his death. (*n*) And if a bishop or other ecclesiastical person neglect to make his claim within five years after a fine is levied of an estate to which he is entitled by right of his bishopric, &c. he will be barred during his life: but his successors

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| ( <i>h</i> ) Cro. Car. 575. W. Jones  | ( <i>m</i> ) Plowd. 374. 3 Rep. 87. |
| 452.                                  | a. Cro. Eliz. 896. Touch.           |
| ( <i>i</i> ) Cro. Jac. 332.           | 33. Cro. Jac. 61. 8 East            |
| ( <i>k</i> ) Touch. 30.               | 552.                                |
| ( <i>l</i> ) 2 Wils. R. 19. 4 Hen. 7. | ( <i>n</i> ) Dyer 72 b. 224 a. 8    |
| c. 24. s. 3.                          | Rep. 72. b.                         |

are within the second saving, and will be allowed five years to avoid the fine from the time of their becoming entitled to the estate. (o) And all persons having offices for life to which lands and tenements are annexed, neglecting to make claim within five years after the fine is levied, will be barred during their lives. But each successive officer will be allowed five years to avoid the fine, from the time when he becomes entitled to the lands. Strangers to fines having several different and distinct rights, by several titles, accruing at different times, shall have several periods of five years allowed them to avoid a fine, that is, five years after the accruing of each title. (p) When once the five years allowed to persons, labouring under disabilities, to avoid a fine, begin, the time continues to run, notwithstanding any subsequent disability. (q) A fine from one joint tenant to his companion will operate by way of release. (r) A fine may also operate as a confirmation of a former estate which was before defeasible. (s) A fine being a judgment obtained by consent in a fictitious suit, and recorded in a court of Justice, all those who

(o) Plowden 538.

(r) *Eustace v. Scawen*, Cro.

(p) Cro. Eliz. 220.

Jac. 696.

(q) *Doe v. Jones*, 4 T. R.(s) *Seymour's case*, 10 Rep.300. *Stowell v. Zouch*,

95.

Plowd. 355.

are parties to it, and their heirs, are for ever precluded from averring or proving any thing against it; and therefore it operates as to them as an estoppel on record. Thus although a fine, levied by persons who have no estate of freehold in the lands, is void as to strangers, yet it will operate as an estoppel against all the parties to it. (t) So if two persons are seised in fee, and a stranger levies a fine to them and to the heirs of one of them, the other will be thereby estopped from claiming any thing more than an estate for life in the lands. A contingent remainder may be barred by a fine, which will operate as an estoppel, so as to bind the interest that might afterwards accrue by the contingency. (u) A fine levied by tenant in tail, with the immediate reversion in fee in himself, makes the reversion liable to the incumbrances of all those who were entitled to it. (v) Therefore where a tenant in tail, having the immediate reversion in fee in himself, makes a lease, acknowledges a judgment, or incumbers his estate in any other manner, and afterwards levies a fine, it will let in the reversion, and make it liable to all those incumbrances. A fine levied by a tenant for life operates so as to divest and displace the estates in

(t) Touch. 14.

(v) 1 Show 370. *Sperling v.*(u) *Vick v. Edwards*, 3 P.*Trecoor*, 7 Ves. 497.

Wms. 372.

remainder, and also the reversion. (w) A fine will also discontinue an estate tail, as well as divest and turn into a right remainders and reversions. (x) But where a fine is only levied as a confirmation of some prior conveyance, it will not in that case operate as a discontinuance of an estate tail, or take away the entry of the remainderman. (y) Where however a fine is levied in pursuance of a covenant, in a prior conveyance by tenant in tail; as where a tenant in tail conveys his estate by lease and release, and covenants in the release to levy a fine, which is done accordingly; in that case the lease, and release, and fine, will be considered as one assurance, and will therefore operate as a discontinuance of the estate tail. (z) But as there can be no discontinuance of things lying in grant, if a tenant in tail of an incorporeal hereditament levies a fine, there is no discontinuance. A fine will operate as a revocation of a prior devise. And where a person who is only a tenant for life levies a fine *sur cognizance de droit come ceo*, &c. it will operate as a forfeiture of his estate, because it is an attempt to create a greater estate than he can lawfully convey. (a) So if a tenant for life accepts

(w) 1 Inst. 251. b. 327. b. (z) *Doe v. Whitehead*, 2  
Hard. 401, 2. Burr. 704.

(x) Litt. s. 597. 1 Inst. 327 a. (a) 1 Inst. 251. b. Gilb.

(y) *Seymour's case*. Ten. 38.

such a fine, it is a forfeiture of his estate for life. (b) But where the person who has the next estate of inheritance joins with the tenant for life in levying a fine, it does not then operate as a forfeiture. (c) A fine *sur concessit* levied by a tenant for life will not operate as a forfeiture of his estate, because it only transfers such an interest as the tenant for life may lawfully pass, without divesting or displacing the estates in remainder or reversion. A fine by a copyholder will operate as a forfeiture, and no acceptance of rent by the lord will make the estate good. A fine *sur done, grant, and render*, alters the course of descent, though a fine *sur cognizance de droit come ceo*, &c., where no uses are declared, or it is declared to the use of the cognizor and his heirs, does not. (d) The king cannot be barred by a fine, to which he is not a party; nor ecclesiastical corporations who are restrained from alienation: (e) though a bishop, dean, or vicar, may be himself barred by his own nonclaim. It is a rule of law that no estate or interest can be barred by a fine, unless it is divested out of the real owner, either before the fine is levied, or by the operation of

(b) 9 Rep. 106. b. *Smith v. Abell*, 2 Lev. 202. (d) *Price v. Langford*, 1 Show. 92.

(c) *Bredon's case*, 1 Rep. 76. 1 Vent. 160. (e) *Magd. Coll. case*, 11 Rep. 78. b.

the fine itself; that is, unless the real owner is put out of possession of such estate or interest; while he continues in possession, a fine will not affect him. (*f*) And it is not only necessary that a person should be out of possession to be affected by a fine; but it is also requisite that the party levying the fine, should have an adverse possession, inconsistent with that of the person to be barred; so that if the possession of the person who levies a fine be consistent with that of any other person, the latter will not be affected by it. (*g*) A rent, right of way, or common, in the possession of a third person, cannot be barred by fine. (*h*) Where women, having estates in dower or jointure, discontinue or alien them, such discontinuances are declared to be void by stat. 11 Hen. VII. c. 20., and by the stat. 32 Hen. VIII. c. 36. s. 32. it is declared that no fine levied by a woman of any such estate as is mentioned in the stat. 11 Hen. VII. shall be of any effect. By the 32 Hen VIII. c. 28. s. 6. it is declared that no fine levied by a husband, of any lands, whereof he is seised in right of his wife, shall be prejudicial or hurtful to the wife or her heirs. A springing or shifting use cannot be defeated or destroyed by a fine levied of the estate out of which such use is to arise.

(*f*) 5 Rep. 123. b. 9 Rep.  
106. a.

(*g*) 5 Cruise 235. Edit. 3d.  
(*h*) *Ibid.* 237.

## CHAPTER II.

## ON THE NATURE AND EFFECT OF COMMON RECOVERIES.

A COMMON recovery is a judgment obtained in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in such suit. (a) It was originally invented by the ecclesiastics to elude the statutes of mortmain; and afterwards encouraged by the finesse of the Courts of law in 12 Edw. IV. in order to put an end to all fettered inheritances, and bar not only estates tail, but also all remainders and reversions expectant thereon. From that time common recoveries have become extremely frequent; and have ever since been considered as common assurances, by means of which tenants in tail are enabled to bar their estates tail, and to convert them into estates in fee simple.

Although the action on which a common recovery is founded be fictitious, yet the same mode

(a) Bacon's Tracts 148. 5 Cruise 283. Edit. 3d.



of proceeding must be pursued, and all those forms strictly adhered to, which it is necessary to observe in an adversary suit.

The first thing necessary to be done in suffering a common recovery is, that the person who is to be the demandant, and to whom the lands are to be adjudged, should sue out a writ or *præcipe* against the tenant of the freehold ; from which such tenant is usually called the tenant to the *præcipe*. To this writ the tenant appears in Court, either in person or by attorney : but, instead of defending the title to the land himself, he calls on some other person, who upon the original purchase is supposed to have warranted the title, and prays that that person may be called in to defend the title which he warranted, or otherwise to give the tenant lands of equal value to those which he shall lose by defect of his warranty. This is called the voucher, *vocatio*, or calling to warranty. The person thus called to warrant, usually denominated the vouchee, appears in Court, is impleaded, and enters into the warranty ; by which means he takes upon himself the defence of the land. The demandant then desires leave of the Court to imparl, or confer with the vouchee in private, which is granted, of course. Soon after the demandant returns into Court, but the vouchee disappears, or makes default ; in consequence of which, it

is presumed by the Court, that he has no title to the lands demanded in the writ, and therefore cannot defend them ; whereupon judgment is given for the demandant, now called the recoveror, to recover the lands in question against the tenant ; and for the tenant to recover against the vouchee, lands of equal value in recompence for those so warranted by him, and now lost by his default. This is called the recompense of recovery in value : but as it is customary to vouch the crier of the Court of Common Pleas, who is thence denominated the common vouchee, the tenant can only have a nominal, not a real, recompence for the land thus recovered against him by the demandant. A writ of *habere facias seisinam* is then sued out, directed to the Sheriff of the county in which the lands thus recovered are situated ; and, on the execution and return of this writ, the recovery is completed. The recovery here described is with a single voucher : but recoveries are generally suffered with double, or with further voucher, as the exigency of the case may require ; and then there are several judgments against the vouchees. In a recovery with double voucher, which is the most frequent, the tenant in tail conveys an estate of freehold to some indifferent person, against whom the writ is brought. This person, being tenant to the præcipe, vouches the

tenant in tail, who vouches over the common vouchee, upon whose default judgment is given for the demandant against the tenant to the præcipe, and for him against the tenant in tail, and for the tenant in tail against the common vouchee.

The circumstances necessary to the suffering a common recovery are, *first*, that a proper writ be sued out; *secondly*, that the person against whom the writ is brought, be *actual tenant of the freehold*; *thirdly*, that such tenant vouch over some other person; *fourthly*, that judgment be given for the demandant against the tenant, and for the tenant against the vouchee; and, *fifthly*, that the recovery be executed by the sheriff of the county in which the lands lie. (b) A common recovery may be suffered on any writ by which lands are demand-  
Circumstances necessary to suffering a recovery.  
Writ of entry.  
 able; and the writ which is now usually sued out for that purpose is the writ of *entry sur disseisin en le post*, which is the safest for purchasers, because they need not fear writs of error for wrong or illegal vouchers. There is a fine payable to the Crown at the alienation office, upon suing out a writ of entry of the same nature as that upon suing out a writ of covenant to levy a fine: and if a recovery be suffered without an original writ, it is not absolutely void, but only voidable. (c)

(b) 5 Cruise, Tit. 36. c. 2. (c) Anon. Lit. Rep. 299.

Of the tenant to the Præcipe.

It is absolutely necessary that the tenant to the præcipe, or person against whom the writ of entry is brought, should have an estate of *freehold in possession*, either by right or by wrong, in the lands demanded by the writ, at the time when the recovery is suffered, or before judgment is given, (*d*) or sometime during the term in which the recovery is suffered; (*e*) and though his estate be afterwards defeated, the recovery will be good. Leases for lives, at rent, however, need not be surrendered, (*f*) though persons having a prior estate for life must join. (*g*) Where the possession has gone with a recovery for a long time, the Court will presume a surrender by the tenant for life, although no surrender be proved: (*h*) but not where the possession has not accompanied the recovery. (*i*) Where the person who intends to suffer a recovery is in actual possession of the freehold, he may convey it to any stranger, for the purpose of making him tenant to the præcipe, by fine, feoffment, grant, bargain and sale inrolled, or lease and release.

- (*d*) *Lacy Williams'* Rep. temp. Holt 614. 2 Salk. 568. 1 Lord Raymond 227, 475. Carth. 472. *Sam-bourne v. Belk*, 1 Show. 347.  
(*e*) 14 Geo. 2. c. 20. s. 6. *Goodright v. Rigby*, 2 H. Black. 46.

- (*f*) 14 Geo. 2. c. 20.  
(*g*) *Ibid*.  
(*h*) *Green v. Froud*, 1 Vent. 257. *Warren v. Grenville*, 2 Stra. 1129.  
(*i*) *Goodtitle v. Duke of Chandos*, 2 Burr. 1056.

And if a fine be levied in order to make the tenant to the præcipe, even though no use be declared, (in which case the use generally results), it shall still enure for that purpose. (*k*) A husband, seized in right of his wife, may alone make a good tenant to the præcipe without fine. (*l*) When the tenant to the præcipe is made by bargain and sale; the bargainee may appear, and vouch before entry, or before the bargain and sale is enrolled, provided it be enrolled within six lunar months, as prescribed by the statute. (*m*) And a recovery is good after twenty years, though the deed making the tenant to the præcipe be lost, if it appear that the persons joining in such recovery had a sufficient estate and power to suffer the same. The conveyance generally used for the purpose of making the tenant to the præcipe, is, either a lease and release, or a bargain and sale enrolled, (*n*) neither of which will be void for any trifling inaccuracy. (*o*) The bargain and sale is considered as the most eligible conveyance, an office copy of the inrolment,

(*k*) *Altham v. Anglesey*, Gilbert's Rep. 16. *Thrustout v. Peake*, 1 Stra. 12.

(*l*) Roll. Ab. Tit. Recov. A. pl. 4.

(*m*) *Robinson v. Comyns*. Forrest. 164. 27 Hen. 8. c. 16.

(*n*) See the deeds of Release and Bargain and Sale, in the Appendix.

(*o*) *Viscount Say and Sele and Others v. Lloyd and Others*, 4 Brown's Parl. Cases, 73.

examined and proved on oath, being sufficient evidence of it. (p) Where the lands are of considerable value, or are intended to be sold in parcels, it is most advisable to make the tenant by a deed inrolled; that purchasers may on referring to the inrolment, and, if necessary, taking an office copy of it, have complete evidence of the validity of the recovery; by this means the owner, on a sale of the estate in parcels, may avoid the necessity of giving the purchasers copies of the recovery deeds. (q) If the deed should happen not to have been enrolled within the time prescribed by the statute, still, if the lands are out upon leases for years, or in the hands of tenants at will, it has been observed, there is room to contend, that though the deed be void as a bargain and sale, for want of due inrolment, yet it may operate as a grant of the reversion expectant on those particular estates. (r) A feoffment, with livery of seisin, was frequently in use, for the purpose of making the tenant to the writ; and it was formerly the general opinion, that though the feoffor had only a naked possession, yet a fee simple passed by the livery, either by right or by wrong. But this doctrine has, in some respects, been denied in a case where the tenant was made by feoff-

(p) 10 Anne, c. 18. s. 3.

(r) Hargrave and B.'s Co. Litt.

(q) 1 Prest. Con. 22.

Book iii., note 294.

ment, (s) which seems to be the principal reason why this description of conveyance is not now generally used for that purpose. It is, however, the opinion of a celebrated conveyancer, that bare possession in the feoffor is sufficient to give an estate of freehold to the feoffee, upon which a fine may be levied, or a recovery suffered. (t) And as the conveyance by feoffment is allowed to be the most excellent of all others, and, in some respects, to surpass even a fine or recovery ; (u) it seems to be entitled to a preference over the mode of making the tenant, either by lease and release, or by bargain and sale ; especially where the title of the party about to suffer the recovery is at all defective, or doubtful in any respect. The deed, whether it be a release, a bargain and sale, or a feoffment, is sometimes accompanied by a fine, (v) either for barring the dower of one of the parties, strengthening the title, or some other reason ; (w)

(s) *Doe d. Atkyns v. Horde*  
and *Others*, Cowp. Rep.  
689. 6 Brown's P. C.  
363.

(t) *Hargrave and B.'s Co.*  
Litt. Book iii. note 285.

(u) *Touchstone*, c. 9.

(v) The only use of a fine  
is, to put the evidence of  
there being a good tenant  
to the writ upon record.

*Hume v. Burton*, Ridg-  
way's Parl. Cases, 273.

(w) Where a tenant in tail,  
who has the immediate re-  
mainder or reversion in  
fee in himself by descent,  
is not likely to live until  
the recovery can be com-  
pleted ; it may be prudent  
to make the tenant to the  
præcipe, by a fine to be

and where a fine is necessary, (x) even an erroneous one will be sufficient: (y) but the cognizor must be in possession of the freehold. (z) And though the fine be acknowledged in vacation, yet, if it be passed as of the preceding term, which it may be, it will support a recovery in the preceding term; (a) for it is sufficient if the fine be levied as of the term in which the recovery is suffered, (b) or of a prior term.

And though the deed and fine making the tenant, are executed and levied subsequent to the judgment or delivery of seisin, yet if it be in the same term, it is sufficient: (c) but to free the title from doubt, the deed should be executed by the grantor or bargainor before the end of the term; (d) for it seems antedating it will not do. (e)

acknowledged preparatory to the recovery; for then the entail will be barred, though the tenant in tail die before the recovery be effected: but then this would let in the incumbrances upon the reversion. See note 1, Barton's Precedents 273.

(x) It is not necessary for a man and his wife to levy a fine to make the tenant. 2

Christian's Black. note 363.

(y) *Lloyd v. Evelin*, 1 Sal-

keld's Rep. 589.

(z) *Smith d. Dormer v. Packhurst and Others*, 3 Atk. Rep. case 48.

(a) *Lord Say and Sele and Others v. Lloyd and Others*.

(b) *Phetyplace's case*, 3 Keble's Rep. 597.

(c) 14 Geo. 2. c. 20. See also *Goodtitle d. Burton, v. Rigby and Others*. 2 Hen. Black. Rep. 46. 5 T. R. 117.

(d) *Pigott Com. Rec.* 2.

(e) *Ibid.*



It however is not material to the validity of the recovery, whether the grantee or bargainee, execute the deed or not, as the want of his execution will not be a defect in the title : for it is rather on account of the declaration of uses, than the validity of the recovery, that the deed is usually executed by him. (*f*) But if he possess any interest, however trivial, it will be necessary for him to be an executing party : therefore, to prevent future difficulties being raised upon the title, it has been deemed the better way for him to execute the deed. *And as the validity of the recovery will mainly depend upon there being a good tenant to the præcipe,* (*g*) previous to the conveyance being prepared for that purpose, the title should be carefully investigated to ascertain in whom the freehold is vested, in order that the concurrence of such person may be obtained in making the tenant to the writ. (*h*) A husband, whether seized jointly with his wife, or only in her right, can make a good tenant to the writ, without the concurrence of his wife ; (*i*) and

(*f*) Preston's Conv. 175.

1 Preston's Conv. 28.

(*g*) It has happened more

(*h*) *Ibid.* tit. Rec.

than once, that six recoveries have been suffered to bar the same estate tail, and that five of them were defective for want of a good tenant to the writ.

(*i*) See the opinion of Mr. Booth, and also his note of the case of *Robinson and Comyns*, 1 Cases and Opinions, 436.

this is said to be the constant practice, because it saves the expense of a fine. (*k*) If the wife has the freehold, by way of separate estate, she alone is competent to make the tenant: (*l*) but, if the lands be limited to the husband and wife and their heirs, they must both join in the conveyance. (*m*) And a person receiving, (*n*) or entitled to receive, (*o*) the rents and profits from trustees, may make a tenant for an equitable recovery.

Of the demandant.

As to the demandant it may be observed, that it seems quite immaterial who he is, or whether he be previously named for the purpose or not, though he usually is named in the deed making the tenant to the præcipe. On a sale of lands the purchaser is sometimes made the demandant, and sometimes the purchaser and his trustee are both made demandants; (*p*) in marriage settlements one of the trustees is usually named for this purpose. When the recovery is suffered merely for the purpose of converting the estate tail into a fee simple, the solicitor of the tenant in tail is usually made demandant. And in all cases the party's solicitor if he reside

(*k*) *Pigott*, Com. Rec. c. 3.

Ves. Rep. 266.

(*l*) 1 *Preston's Conv.* 35.

(*o*) *Grenville v. Blyth*, 16

(*m*) *Clithero v. Franklin and*

Ves. 224.

*Others*, 2 *Salk. Rep.* 567.

(*p*) *Touchstone*, c. 3. and

(*n*) *Barnaby v. Griffin*, 3

see the Appendix.

in town, or his agent if the solicitor reside in the country, is made the tenant, as will hereafter be seen, in order that he may appear personally in Court; for though the demandant never actually appears, yet the tenant as well as the vouchee must appear, either in person or by attorney.

In describing the manner of suffering a recovery, it has been stated, that when the tenant to the præcipe appears in Court to answer the demandant's writ, instead of defending the title to the land, he *vouches*, that is *calls*, on another person who is supposed to have warranted the title to him at the time of the original purchase; and prays that that person may be called in to defend the title which he warranted, or otherwise to give lands of equal value to those which he shall lose by such defect of warranty. It has been held that if the writ of entry be brought against a tenant for life and a tenant in tail jointly, the recovery will be no bar to the estate tail; (q) and that if the writ be brought against the tenant in tail, and so the recovery is suffered with single voucher, it will only operate as a bar to the estate of which he may be in possession at the time when the recovery is

(q) See *Leech v. Cole*, Cro. Eliz. 670. But this case is virtually overruled by

that of *Page v. Hayward*, Pig. 176. 2 Salk. 570.

suffered: but it will be no bar to the remainders over. (r) It is therefore now the practice always to suffer recoveries with at least double voucher, except where lands are given in tail, with a conditional limitation over, in the event of an alienation; in which case the writ of entry may be brought against the tenant in tail himself, and so the recovery be effected with a single voucher. In all other cases, recoveries should be suffered with at least double voucher; for if the recovery be had against another person, and the tenant in tail be vouched, it bars every latent right and interest which he may have in the lands recovered. (s) A recovery with treble voucher is used to make a perpetual bar of the estate whereof the tenant to the præcipe was seized; and also of every estate of inheritance, which has ever been in the first or second vouchee, or their ancestors; and also of all remainders and reversions depending on those estates, and all charges and incumbrances derived out of those remainders and reversions. If a tenant for life and the remainder-man join in suffering a recovery, they may be jointly vouched, (t) and vouch over the common vouchee. But it is

(r) *Meredyth and Others v.*

Plow. 8.

*Leslie and Others*, 6 Bro.

(t) *Doe d. Greasley v. Nelson and Another*, 2 Taunt.

P. C. 338.

(s) Bro. Abr. tit. Taille, 82.

Rep. 58.

not absolutely necessary that the tenant for life should be a party to the recovery; he may previously surrender his life estate to the remainder-man, (u) or join with him in making the tenant. It seems however prudent for the tenant for life to be a party, and to come in as vouchee; for if he should happen to have any old intail vested in him, it would thus be barred: indeed it is the safest and wisest plan for a purchaser of a family estate to bring in and vouch as many of the family as he can. (v) And though an uninterested party happen to be joined in the voucher with the tenant in tail, the recovery will be good. If a tenant or vouchee, who has appointed an attorney for the purpose of suffering a recovery, die before such attorney has actually appeared for him, the recovery will be void: because the death of such tenant or vouchee is a determination of the warrant of attorney; and that circumstance not being contrary to the record may be averred. (x) And if the warrant of attorney appear to have been given after judgment, the recovery will be void; (y) for the writ of *Dedimus potestatem de attornato faciendo re-*

(u) Pig.-Com. Rec. c. 2. and

Com. Rec. p. 176.

see *Warren d. Webb v. Grenville*, 2 Strange's Rep.

(x) *Wynne v. Wynne*, 1 Wils. R. 35.

1229. For the form of such a surrender, see Append.

(y) *Bolderow v. Futter*, Dyer 220 a.

(v) *Page v. Hayward*, Pig.

cites that the writ of entry is pending, which is not the case after judgment; and the appearance of the attorney before the warrant was made was without authority, and therefore void. The acknowledgment of a warrant of attorney may be void, and of consequence the recovery suffered pursuant thereto, on account of any legal disability in the person who acknowledges it; and such disability may be averred; in which it differs from the acknowledgment of a fine, this being the assent of the party to the accommodation of the suit, by which it is absolutely completed, and the entry of the concord is the same as entering up judgment. But the acknowledgment of a warrant of attorney to suffer a recovery is nothing more than a judicial mode of appointing another person to appear in court for the tenant or vouchee, and is no part of the record; hence these two acts are attended with very different consequences. The circumstances essential to the due taking of these acknowledgments will be detailed in a subsequent Chapter: but it may here be observed that where there are several vouchees, they must all join in one warrant of attorney; for though all the vouchees should appoint the same attorney, yet if there are several warrants of attorney and several captions, the recovery will not be allowed to pass. (z)

(z) *Jennings v. Vernon*, 3 Bos. and Pull. 361.

If the person whom the tenant vouches be not in Court, then a writ of *Summoneas ad warrantizandum* issues to compel the vouchee to appear in Court, and warrant the land. Where the vouchee, who comes in upon this writ, appears by attorney, the warrant ought to bear date after the *teste* of the writ of summons. But the omission of this circumstance will not invalidate the recovery, for the Court would intend another warrant of attorney made in due time. (a) The Court however will not enlarge the return of a writ of summons, so as to make a term intervene between the *teste* and the return. (b)

Of the writ  
of Sum-  
mons.

In consequence of the default made by the person who is last vouched, and his departure in despite of the Court, judgment is given that the demandant shall recover seisin of the lands in question, and that the tenant shall recover against the vouchee lands of equal value to those warranted by him, and now lost by his default : and as soon as judgment is given, the recovery becomes binding on all the parties and their heirs. (c) In every common recovery the demandant acquires by the judgment the fee

Of Judg-  
ment.

- (a) *Wynne v. Lloyd*, T. 2 Black. Rep. 1201. S. P.  
Raym. 16. 1 Sid. 213. 1 1223.  
Lev. 130. (c) 5 Cruise 344. Edit. 3d.  
(b) *Barnard v. Woodcock*,

simple of the lands recovered, although the word "*heirs*" be not mentioned; because the writ being brought for the absolute property of the lands, if judgment is obtained, it must be for so much as was demanded in the writ; and in all adverse suits, every recoveror recovered a fee simple. (d) If judgment be given before the return of the writ of entry, or, where the vouchee is summoned, before the return of the writ of summons, the recovery is void, because the Court has no power to proceed until the return of the writ of entry and the appearance of the vouchee: for the parties are not supposed to appear before the return of that process which is issued for the sole purpose of bringing them into Court. If any of the parties die before judgment, the recovery is void. Judgments, however, are not always considered as having been given on the day when they are pronounced, but have frequently a relation to the first or some other day of the term in which they are given: and if all the parties be living on the day to which the judgment relates, the recovery will be good; for the judges take no notice of the day on which it was passed in Court. Judgments generally relate to the first day of the term in which they are given, because writs of entry upon which recoveries are

(d) 1 Inst. 9 b.



suffered are generally returnable then : but where the writ of entry is returnable on the second or any other return day of the term, the judgment will only relate to that return day, (e) for the Courts will not consider the judgment to have been given prior to the return day of the writ of entry. And where the term, by the proceedings in it, suffers a division, as, where any process issues during the continuance of the term, then the judgment relates to the essoign day of the return of that process, and not to the first day of the term. Where, therefore, a vouchee appears in person at the return day of the *writ of entry*, the judgment relates to that day ; and is considered in law as having been given then : but if the vouchee appear upon a writ of *summons*, the judgment only relates to the return day of this writ. And if the parties are alive at any time of the return day, the recovery will be good ; for the law makes no fractions of a day, but every act of record is supposed to be done in the first instant of the day. (f) If a warrant of attorney bears date after the return day of a writ of entry, the recovery will be void ; because the judgment relates back to that time. (g) And if a vouchee who comes in upon a writ of summons, and ap-

(e) 4 Rep. 71 a. *Selwin* (f) *Shelley's Case*, 1 Rep. 93.  
v. *Selwin*, 2 Burr. 1131. (g) *Bolderow v. Futter*.

pears by attorney, die before the return day of the writ of summons, the recovery is void ; because the judgment could not possibly have been given until the vouchee had appeared in Court and made default ; and as the vouchee could not appear until the return of that process which issued for the sole purpose of bringing him into Court, it follows that judgment must have been given after the death of the vouchee, which was a determination of the warrant of attorney. And these facts being collateral to the record may be assigned for error. (h) If a writ of *summons* be returnable on a Sunday, and the vouchee die on that day, the recovery is void ; because Sunday being a *dies non juridicus*, judgment could not possibly have been given till the Monday following ; so that it must have been given after the death of the vouchee. (i)

Of execution.

Where the demandant has obtained judgment against the tenant, and the tenant against the vouchee, the Court awards the writ of *Habere facias seisinam*, in the same manner as upon a judgment in an adversary action, to the sheriff of the county in which the lands lie, directing him to put the recoveror into possession of the lands, which he has recovered ; and when the

(h) *Wynne v. Wynne.*

*Sheepchanks v. Lucas*, 1  
Burr. 410.

(i) *Swann v. Broom*, 3 Burr.  
1595. 1 Black. Rep. 496.  
526.

writ is returned, the recovery is complete and executed. The writ of seisin should bear *teste* the fourth day inclusive after the return of the writ of *entry*, or last writ of summons, when the vouchee comes in by writ of summons: and there should be fifteen days between the *teste* and return of the writ of seisin. It is, however, said in the case of *Goodright v. Rigby*, (*k*) that the day named in the return of the writ of seisin is immaterial, it not being necessary to name any particular day, as the return would be good without it. All that was necessary was, that seisin should be delivered after the judgment, and before the return of the same writ; and that the proceedings should all be in the same term. A judgment in a recovery has no operation; nor does it alter the nature of the estate, until it appears to have been regularly executed by the return of the writ of seisin. And as nearly all recoveries are now suffered to uses, the recoverors do not acquire any seisin, and consequently no use can arise, until the recovery is executed, that is, until the writ of seisin is returned; for it is never now actually executed. (*l*) If a recovery be suffered of lands let on leases for years, the recoverors have not the reversion presently, by the judgment: but it

(*k*) 2 Hen. Black. 63.

(*l*) W. Jones 10. 2 Stra.  
1185. 5 T. R. 179.

must be executed. (m) By stat. 7 Hen. VIII. c. 4. all recoverors are allowed the same remedies against lessees for lives and years, by distress, avowry, and action of debt, for rents and services which became due after the recovery, to which the person against whom the recovery was had was entitled. (n) If a person suffer a recovery, and die before the writ of seisin be issued, the recoveror may have execution against the heir. (o) The award, execution, and return of the writ of seisin by the Sheriff, must all appear upon record; and if the execution of a recovery be not found in a special verdict, it cannot be presumed by the Court. (p) By stat. 43 Eliz. c. 3. s. 1. it is enacted that every original writ of *entry in the post*, or other writ whereupon any common recovery shall be suffered, the writs of *Summoneas ad warrantizandum*, the returns of the said *originals* and writs of *summons*, and every warrant of attorney as well of every demandant and tenant as vouchee extant and in being, may, upon the request or election of any person, be enrolled in rolls of parliament, and that the enrolment of the same or any part thereof shall be of as

(m) *Shelley's Case*, 1 Rep. 106.

(n) 1 Inst. 104 b.

(o) 1 Rep. 93.

(p) *Witham v. Lewis*, 1 Wils. Rep. 6 Brown. Parl. C. 327. See also 5 T. Rep. 179.

good force and validity in law to all intents and purposes for so much of any of them so inrolled as the same being extant and remaining were or ought to be. The recovery having been completed by the return of the writ of seisin, a certificate of all the proceedings is then made out under the seal of the Court, and delivered to the party suffering the recovery, which is called the *exemplification*.

From what has been said, the *effect* of a common recovery with proper vouchers will appear to be an absolute bar not only of all estates tail, but of all remainders and reversions expectant on the determination of such estates, and of all charges and incumbrances created by the persons in remainder and reversion. (q) And the power of suffering a recovery is one of those privileges so inseparably annexed to an estate tail, that it cannot be restrained by any condition, limitation, proviso, or covenant whatsoever. (r) If a tenant in tail levies a fine with proclamations, and afterwards suffers a recovery, although the estate tail was destroyed by the fine, yet still the recovery will bar the remainders and reversion depending on the es-

Of the effect and operation of a recovery.

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| (q) <i>Mary Portington's case</i> ,    | T. Ray. 236.                      |
| 10 Rep. 37 b. <i>Capel's case</i> ,    | (r) 1 Inst. 223. b. 1 Burr.       |
| 1 Rep. 62. <i>Cholmley's</i>           | 84. <i>Corbet's case</i> , 1 Rep. |
| <i>case</i> , 2 Rep. 52. <i>Hudson</i> | 83. <i>Mildmay's case</i> , 6     |
| <i>v. Benson</i> , 2 Lev. 28. Sir      | Rep. 40.                          |

tate tail. (s) But if a person be attainted of treason, and afterwards suffers a recovery, it will not bar the remainders or reversion; because a person attainted is not capable of taking any thing but for the benefit of the king. (t) An equitable or trust estate tail, and all equitable remainders expectant thereon, and also the equitable reversion, may be barred by a common recovery, without the concurrence of the persons in whom the legal estates are vested. (u) But though a recovery will bar an equitable as well as a legal remainder, (v) yet the estate must be completely legal or completely equitable; and therefore a person who is seised of only an equitable estate for life and a legal remainder, cannot of himself suffer either a legal or an equitable recovery. (w) But if the tenant for life has the legal as well as the equitable estate for life, he may bar an equitable estate tail. (x) Estates tail of the gift of the crown may be barred by a recovery, unless they have been given as a reward for services: but it is doubtful whether the reversion in the crown would be barred. (y) A recovery may be suffered of a rent-charge

- (s) *Herbert v. Binion*, 1 Litt. Book 3. n. 249.  
 Roll. 223. (w) *Salvin v. Thornton*,  
 (t) 2 Roll. Ab. 394. Amb. Rep. 545, 699.  
 (u) *Burnaby v. Griffen*, 3 (x) *Brydges v. Brydges*, 3  
 Ves. 276. Ves. 120.  
 (v) *Hargrave and B. Co.* (y) *Plowd. 553. 1 Inst. 335, a.*

issuing out of land: (z) but a distinction has been established between a grant of a rent-charge in tail, with a remainder over of the same rent-charge in fee, and a grant of a rent-charge in tail without any subsequent limitation of it in fee. In the first case the tenant in tail acquires an estate in fee simple in the rent-charge by the operation of the recovery: but in the latter he only acquires a base fee determinable on his decease and failure of issue. (a)

A recovery by tenant in tail does not extinguish the estate tail, but enlarges it into a fee commensurate with the estate of the person who creates the entail. So that if the donor had the fee when he created the entail, then the tenant in tail will by his recovery acquire the fee-simple. But if the donor had only a determinable fee, then the tenant in tail by his recovery will obtain a like determinable estate. (b) A recovery by tenant in tail, even though suffered for a particular purpose, (c) renders valid all former acts of ownership exercised by him; and operates to confirm and let in all his preceding incumbrances. But it seems that equi-

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| (z) <i>Smith v. Barnaby</i> ,     | Jac. 593. Coventry on             |
| Carter, 52.                       | Rec. 155.                         |
| (a) <i>Chaplin v. Chaplin</i> , 3 | (c) <i>Goddard v. Complin</i> , 1 |
| P. W. 220.                        | Cha. Ca. 119.                     |
| (b) Per. Houghton, J. Cro.        |                                   |

table incumbrances must be excepted ; for if on a purchase for a valuable consideration, without any notice of such incumbrances, the uses of the recovery be declared in favour of the vendee, the recovery will not operate to confirm the liens and charges in equity. A recovery differs very much in its operation from a fine ; for it has not the effect of establishing an undoubted title as a fine has, after a certain number of years. The force of a fine in barring entails arose from two statutes, made some centuries after it was originally introduced. Recoveries were first introduced for the purpose of barring entails only, and therefore have not so extensive and powerful an effect as fines. But a recovery has several other effects besides that of barring estates tail. (*d*) All those who are parties are bound by it, because, being a matter of record, they are estopped from averring any thing against it ; except infants, and then only where the recovery is reversed during their minority. Married women are bound by recoveries in which they join : (*e*) but a recovery suffered by the husband alone will not bar his wife's dower. A recovery suffered by a person who has a power *appendant* or *in gross* will bar and destroy the power. (*f*)

(*d*) 5 Cruise's Dig. p. 417.

Atk. 430.

third edition.

(*f*) *King v. Melling*, 1

(*e*) *Inclendon v. Northcote*, 3

Vent. 225. 2 Lev. 58.



But a recovery suffered by a person having only a power *collateral* will not destroy it, because it is considered as a bare authority, which cannot be released or divested. A recovery will bar all collateral and conditional limitations and provisoes annexed to an estate tail, if the recovery be suffered, before the condition or event happen, on which the proviso or conditional limitation is to take effect. (e) If a gift in tail be made rendering a rent, and the tenant in tail suffer a recovery, it will not bar the rent, but the rent will still remain as a collateral charge on the land, distrainable of common right; for since the tenant in tail took the land subject to that charge by the original donation, the recoveror, who claims under him, can only have the estate in the same manner as he who suffered the recovery had it. But if there had been a condition of re-entry on non-payment of the rent, the condition would have been destroyed. And although a recovery by a tenant in tail bars all collateral conditions subsequent, and limitations over, yet it has only this operation when suffered by a *tenant in tail*; for a recovery suffered by a *tenant in fee simple* will not bar any executory estate, conditional limitation, or collateral condition, limited after a fee. (f)

(e) *Fearne's Remainders* and (f) *Ibid.*  
Exec. Dev. 428, edit. 8.

A recovery bars all contingent remainders depending on the estate whereof it is suffered, because it destroys the particular estate whereon the remainders depend. (g) And though the judgment in a recovery, being of equal force with that which is obtained in an adversary suit, operates as an estoppel in the manner above mentioned, yet when it is suffered of an estate tail, it will not operate as an estoppel against the issue in tail, the remainderman or the reversioner, (h) because they do not claim from their immediate ancestor but from the first purchaser *per formam doni*; but they are barred upon the fiction of having received the recompence. A recovery operates as a revocation of a prior devise of the lands whereof the recovery is suffered upon the same principle that a fine has that effect. And where a tenant for life suffers a recovery, without the concurrence of the person in remainder, it will operate as a forfeiture of the estate for life in the same manner as if he had levied a fine. (i) But if the tenant for life have the remainder in tail in himself, a recovery suffered by him will not operate as a forfeiture. (k) Where a fine is levied or recovery

(g) *Plunket v. Holmes*, 1 Lev. 11. Sir T. Ray. 28. (h) 5 Cruise, 432, 3d edit. Pigot 123.

*Lodding v. Kime*, 1 Lord Raym. 303. Salk. 243. (i) *Pelham's case*, 1 Rep. 15. (k) *Smith v. Clifford*, 1 T. R. 738.

suffered, of lands held *ex parte materna*, and the use is not changed, the mode of descent will not be altered: (l) though if a tenant in tail by purchase under a marriage settlement made by his maternal ancestor, with the reversion in fee by descent *ex parte materna*, suffer a recovery to the use of himself in fee, the estate will descend to his heirs *ex parte paterna*; because the fee acquired by the recovery will descend in the same manner as the estate tail acquired by purchase from the maternal ancestor; that is, to his paternal heirs. (m) No persons are barred by a recovery but those who are parties to them, the issue in tail, the remaindermen and reversioner, and the persons claiming under conditional limitations expectant or to take effect upon the determination of the estates tail. Nor are any estates or interests barred by a recovery, but those which are subsequent, in point of limitation, to the estate of which the recovery is suffered; for all interests precedent remain as they were before. By 11 Hen. VII. c. 20. no woman, after her husband's death, shall suffer a recovery of lands settled on her by her husband, by way of dower or jointure in tail; or settled on her husband and her-

(l) 5 Cruise 436, 3d edit. (m) *Martin v. Strachan*, 1  
*Abbot v. Burton*, 11 Mod. Strange 1179. 5 Cruise  
 181. 440.

self by any of his ancestors. And a trust estate, or an equity of redemption, is within the statute. (n) But it does not extend to lands which were originally the property of the wife, or which are derived from any of her ancestors; (o) nor to a voluntary gift by a stranger. (p) Neither does the statute apply where lands are limited by a husband or any of his ancestors, to the wife in tail general, without any limitation to the issue or heirs of the husband, because its object was to prevent wives from prejudicing the issue or heirs of their former husbands. (q) For the same reason, a jointure limited to a woman in fee is not within the statute. (r) By stat. 34 and 35 Hen. VIII. c. 20. no recovery had against tenant in tail, of the king's gift by way of reward for services, whereof the remainder or reversion is in the king, shall bar such estate tail or the remainder or reversion of the crown. But unless the grant appear to have been made as a reward for services, no estate tail granted by the crown will come within the protection of this statute. (s) By the stat. 21 Hen. VIII. c. 15. s. 4. no manner of statute staple, statute

(n) 2 Vern. 489. 1 Ab. Eq. 220.

(o) *Eyston v. Studd*, Plow. 463. 1 Inst. 366. a.

(p) *Ward v. Walthew*, Cro. Jac. 173.

(q) *Foster v. Pitfal*, Cro. Eliz. 2. *Hughes v. Clubb*,

Com. R. 369.

(r) 4 Rep. 3, 6.

(s) *Perkins v. Sewell*, 1 Black. R. 654.

merchant, or execution by *elegit*, shall be avoided by any feigned recovery. It may be observed that a recovery is in some cases preferable to a fine, although a fine might bar the estate ; inasmuch as a fine likewise has the effect of letting in the incumbrances of the ancestors, as well as those of the cognizor ; whereas a recovery only lets in the incumbrances of the tenant in tail himself. (t) But even this may be avoided where the tenant for life joins with the tenant in tail in suffering the recovery, either by a conditional surrender from the tenant for life of his estate ; (u) or by inserting in the recovery deed a proviso making void the conveyance of the tenant for life, upon non-payment of a certain sum of money within a given time, previous to which the recovery is suffered ; and then the money not being paid at the expiration of the time limited, the tenant for life becomes again seised of his former life estate, and so prevents the recovery from letting in the incumbrances of the tenant in tail. (v)

(t) See *Beck v. Hawkins*.

a surrender.

*Welch*, 1 Wils. Rep. 276.

(v) *Hargrave and B.'s Co.*

(u) See Appendix X. for such

Litt. Book III. n. 94.

## CHAPTER III.

OF THE PARTIES TO FINES AND RECOVERIES ; OF  
WHAT THINGS THEY MAY BE LEVIED AND SUFFERED ; AND OF THE DECLARATION OF USES.

Of the parties to fines and recoveries.

FINES and recoveries being considered as common assurances or conveyances of real property, all persons whom the law enables by other methods to dispose of their property, and who are of full age and competent understanding, have in general power to pass their estates by these assurances. So that any person, male or female, body sole or corporate, that is capable of granting by deed, may levy a fine ; and any person capable of taking by grant, or who may be a grantee by deed, may take by a fine. And any person may be a demandant, tenant, or vouchee, in a recovery, who may be cognizor or cognizee in a fine. (w) An infant trustee, (x) may under an order of the Court of Chancery

(w) Touch. c. 2, 3.

Book III. n. 186.

(x) Hargrave and B.'s Co. Litt.

or of the Court of Exchequer, on a petition for the purpose, (y) levy a fine, (z) or suffer a recovery. (a) As to the joining of different parties in the same fine, the general rule is, that where several parcels of property together, exceed two hundred pounds in value, the parties cannot join and include them in one fine. (b) But where the value of the parcels does not exceed two hundred pounds, several parties are allowed to join in one fine; and any number of persons having separate interests in one tenement, of whatsoever value, may pass their interests to any number of purchasers by one fine. (c) In this joint fine, as it is called, each vendor warrants for himself and his heirs his separate part of the lands; (d) but previous to the cursitor's issuing the writ of covenant for the joint fine, he must have an affidavit of the value; and when the acknowledgments are taken by *dedimus*, the value may be mentioned in the affidavit of the captions. Persons outlawed or waived in personal actions may alien by fine; for their es-

(y) By the 7 Anne, c. 5.

and *Others*, 5 Taunt. 265.

(z) *Lombe v. Lombe*,

(c) *Lindo v. —*, 5 Taunt.

Barnes's notes 217.

305.

(a) *Ex parte Johnson*, 3

(d) See Append. LXX. for

Atk. case 208.

the concord of such a fine.

(b) *Appleyard v. Brown*

tates still remain in them, though they have forfeited the rents and profits. (e) But no person can levy a fine of lands that will affect strangers, unless he has an estate of freehold, either by right or by wrong, in such lands. A fine by a tenant for years, or who holds by statute merchant, statute staple, or writ of *elegit*, or by a copyholder, will have no effect whatever. (f) If an alien levies a fine, or suffers a recovery, it will not conclude the king after office found. (g) The Court will not interfere to authenticate a fine levied by a married woman in the absence of her husband, though he has become a bankrupt and omitted to surrender himself, and is gone beyond seas. (h) An infant is incapable of being cognizor in a fine, or vouchee in a recovery: but if a fine be levied, or a recovery suffered, by an infant, and is not reversed during his minority, it must for ever after stand good; because the fact of infancy can only be tried by an inspection of the infant's person in open Court (i) Idiots, lunatics, and generally all persons of nonsane memory, are incapable of levying fines or suffering recoveries.

(e) West. Symb. p. 2. s. 13. (h) *Ex parte Abney*, 1 Taunt. 37. *Ex parte St.*

(f) 5 Rep. 77. b. Co. Cop. *George*, 8 Taunt. 590.

s. 55.

(i) 1 Inst. 131. a. 380. b.

(g) 13 Vin. Ab. 228.

12 Rep. 123. Hob. 224.



The parties to fines and recoveries should be accurately named in the writs, *(k)* and other proceedings. *(l)* But where there was a misnomer in the tenant's christian name, it was held not to be material : *(m)* and it seems that if a woman be described as the wife of a person to whom she was not married, it will not invalidate the fine or recovery. *(n)* However it is important that the parties be correctly named, especially as the Court has oftener than once, *(o)* where the name was wrong, refused permission to set it right. So the parties should have their proper legal description : thus a peer, above the degree of a baron or a bishop, should only have his christian name and dignity inserted. *(p)* A baron, baronet, *(q)* or a knight, *(r)* should be so

*Of describing the parties.*

*(k)* In writs the demandant and tenant are to be named by their christian names and surnames, Co. Litt. Book I. c. 1. s. 1.

*(l)* Touch, c. 2.

*(m)* *Doe d. Lushington v. Bishop of Landaff and Others*, 2 Bos. and Pull. N. Rep. 491.

*(n)* Fearn's Posth. Works 344.

*(o)* *Dixon v. Lawson et Ux.* 2 Sir W. Black. Rep. 816. *Ex parte Motley and Wife*, 2 Bos. and Pull. 455.

*(p)* If a duke, marquis, earl, or bishop, grant by his name of honour or dignity, without any, or with a false name of baptism, the grant will be good, because there is but one such person. Touchstone, c. 12.

*(q)* The degree of baronet is parcel of the name. Hargrave and B.'s Co. Litt., Book I. note 95.

*(r)* And likewise the title of knight. 1 Lilly's Digest, 39.

described ; an esquire, or gentleman, (s) may have, and usually has, such addition to his name ; and a parson, the addition of clerk ; but yeomen and common persons are described merely by their christian and surnames. Indeed it is said that even the additions of dignity and honour are used rather by courtesy than of necessity. (t) Where a father and son, having the same names, are parties, they are distinguished by the addition of the words, " the younger," to the name of son. The descriptions of married women are governed by the titles of their husbands, except peeresses in their own right, or by marriage with a former husband. For though a woman, noble in her own right, marry a commoner, she still remains noble ; (u) and if a duchess by marriage afterwards marry a baron, she still remains a duchess, because her husband is noble : (x) but, by a second marriage with a commoner, she loses her dignity. (y) The full description of

(s) Esquire, gentleman, yeoman, &c., is merely an addition, being no part of the name. 1 Lilly's Dig. 39.

(t) Touchstone, c. 2.

(u) 1 Christian's Black. c. 12.

(x) Co. Litt. Book. I. c. 1. s. 9. But this was not allowed to the duchess dowager of Leeds, at the coronation of George III. Cruise on Dignities, c. 3. s. 75.

(y) Cruise on Dig. c. 3. s. 71.

the parties is only inserted the first time the names occur. Afterwards they are distinguished thus: a peer above the degree of baron, by his title of dignity. A bishop is also distinguished by his dignity; and a baron, baronet, knight esquire, gentleman, and common person, by his christian name only: but where two or more persons have the same christian names, the surnames are also used, to distinguish one from the other. (z)

A fine may be levied of any thing that is in being, and inheritable, (a) whether temporal or ecclesiastical made temporal, (b) if it be situated within the jurisdiction of the Court. And though the Court has no jurisdiction over lands in the colonies and plantations, yet fines are occasionally levied in England of lands there, by stating them to be within the jurisdiction of the Court here: (c) but this is said to be done

*Of what things fines may be levied, and recoveries suffered.*

(z) See Append. XIII. for a particular description of the parties.

(a) Touchstone, c. 2. See Append. XII. for the particular things of which fines and recoveries are now usually passed.

(b) By the 32 Hen. VIII. c. 7. s. 7., fines and recoveries may be passed of

parsonages, vicarages, portions, pensions, tithes, oblations, or other ecclesiastical or spiritual profit.

(c) As, in the Island of Antigua, that is to say, in the parish of St. Mary, Imlington. See *Foster v. Pollington and Others*. Barthes's notes 216.

merely because the colonial Court respects such fines as solemn conveyances. (d) Recoveries may be suffered of the same things of which fines may be levied. But no fine or recovery should be levied or suffered in the Court of Common Pleas, of ancient demesne or copyhold lands, because they will not pass thereby, (e) the manor Court being the proper place for that purpose. (f)

Of describ-  
ing the  
things.

In describing the things to be passed by a fine or recovery, particular attention should be directed to their *names*, *quantities*, and *situations*. With respect to the *names*, the rule is, that the nature and quality of the things ought to be expressed by their legal descriptions, in regular order, beginning with those of the highest nature, and descending to the lowest, thus placing castles before manors, manors before messuages, messuages before lands, &c. ; things general before things special, as land before meadow, pasture, &c. ; and entire things before parts. As to the *quantities* it may be observed, that, though great caution should be used to insert enough to include every thing that is intended to be passed ; yet, care should also be taken not to insert much more than suffi-

(d) 1 Prest. Con. 268.

(f) 1 Watkins's Copyholds

(e) *Oliver v. Taylor*, 1 Atk.

161.

Rep. case 225.

cient, as the excess will increase the king's fine. And though the surplus may, in some cases, be avoided by proving the rent value, or purchase money; yet, the adducing of such proof, particularly in country cases, is often attended with trouble and delay as well as expense. Indeed if the rent value, or purchase money, be not very low, to prove the amount, would increase, instead of diminishing the king's fine. (g) Therefore, where the saving of expense is an object, no more parcels should be inserted than are absolutely necessary. In order to avoid the omission of any necessary parcels on the one hand, or the insertion of unnecessary ones on the other, it will be found the best plan, to consult the cursitor as to the requisite description, when the instructions for the writ are taken to him. In regard to the *situations*, it may be observed that, properly, the parcels should be described as lying within, (h) or in a place known out of, a town, (i) hamlet, or parish; as in a li-

(g) For the Commissioner's rules of setting the king's fine by quantity, rent, or value, see App. XXXVII. to XLI.; also the observations on passing the writs of covenant and entry through the alienation office in Ch. VI. VII.

(h) *Baker v. Johnson*, Hutton's Rep. 105.

(i) Tithings, towns, or villas, are of the same signification, 1 Black. Com. introd. s. 4.; and where there is constable, there is a township. *Res v. Sir W. Horton and Another*, 1 T. R.

berty; (k) though they have been held to pass where the place was not known; (l) and, it seems, a mayor, (m) and even a close, (n) may pass by its known name only. When a place is described generally, as "A," it is intended not to be a parish, but a vill: that is, if nothing in the case appear to the contrary; for where the parcels were described in the deed to be in "the parish of A," and in the recovery as in "A," although they were in fact not in the "vill of A," but in the "parish of A," the Court held that they passed by the recovery, as it appeared by the deed that the parties intended they should. (o) If the parcels are described as lying in a particular vill, such of them as may be in another distinct vill, although in the same parish, will not pass; (p) unless the constable of the hamlet named goes over the other vill; for, if he does, then the hamlet named is the superior or mother vill, and the parcels named in the other vill will pass. (q) However if the other vill has

376. But a tithingman is not the same officer as a constable. *Waldron v. Ruscarit*, 1 Ventris' Rep. 170.

(k) *Lever v. Hosier*, 2 Mod. Rep. 47.

(l) *Fagely v. Easton*, Cro. Car. 206, 276.

(m) *Touchstone*, c. 2.

(n) *Monk v. Butler*, Cro. Jac. 574.

(o) *Addison v. Sir J. Otway*, 1 Mod. Rep. 250. and 2 Ibid. 233.

(p) *Stork v. Fox*, Cro. Jac. 120.

(q) *Waldron v. Ruscarit*.

a distinct constable, then no lands in that vill will pass: (r) but there being a tithing man, will not be sufficient to prove that it is a distinct vill, for he is not the same officer as a constable. (s) If the parcels are described to be lying within a liberty, as in "the liberty of A" all of them in any of the vills within the liberty will pass; (t) and if they are described to be lying within a parish, as "in the parish of A" that description will extend to all the vills in the parish; (x) and will include whatever is in any of them; as all that is within the parish will then pass. (x) However to embrace every part of the parcels with the greater certainty, where there is any doubt about the situation, it is usual to name the vills and the parishes too: thus, in A., B., C., D., &c.; and in the parishes of G., H., I., and J. And notwithstanding the description may thus embrace more than the parties intended to pass, yet the fine or recovery will not operate beyond their intention. (y) In describing the parcels in either a fine or recovery, it should be observed too, that they are described, particularly, only the first time they occur, and afterwards generally. To shew the mode of

(r) *Anonymous*, 1 Vent. 143. (x) *Stork v. Fox, Cro. Jac.*

(s) *Waldron v. Ruscant.* 120.

(t) *Lever v. Hosier.* (y) *Kellie's case*, Popham's

(u) 1 Vent. 143. Rep. 104.

these descriptions, and the manner of dividing and arranging the parcels, a few forms have been selected from actual practice, which comprehend most of the things now usually passed by fines and recoveries. (z)

Of the declaration  
of uses.

If a fine or recovery be levied or suffered, without any good consideration, and without any uses declared, they, like other conveyances, enure only to the use of him who levies or suffers them. (a) And if a consideration did appear, yet as the most usual fine, *sur cognizance de droit come ceo*, &c., conveys an absolute estate without any limitations to the cognizée; and as common recoveries do the same, to the recoveror; these assurances could not be made to answer the purpose of family settlements, (wherein a great variety of uses and designations is generally expedient) unless their force and effect were subjected to the direction of other more complicated deeds wherein particular uses can be more fully expressed. The fine or recovery itself, like a power once gained in mechanics, may be applied and directed to give efficacy to an infinite variety of movements in the intricate machine of a family settlement. And if these deeds are made previous to the fine or recovery, they are called deeds to *lead* the uses; if sub-

(z) See the Append. XII. (a) Dyer 18.



sequent, deeds to *declare* them. As if a tenant in tail, with reversion to himself in fee, would settle his estate on B. for life, remainder to C. in tail, remainder to D. in fee; that is what by law he has no power of doing effectually, while his own estate tail is in being. He, therefore, usually after making the settlement proposed, covenants to levy a fine (or if there be any intermediate remainders to suffer a recovery) to E., and directs that the same shall enure to the uses in such settlement mentioned. This is a deed to *lead* the uses of the fine or recovery; and the fine when levied, or recovery when suffered, shall enure to the uses so specified, and no other. For though E. the cognizee, or recoveror, hath a fee simple vested in himself, by the fine or recovery; yet, by the operation of this deed, he becomes a mere instrument or conduit pipe, seised only *to the use of* B., C., and D., in successive order: which use is executed immediately by force of the statute of uses. Or if a fine or recovery be had without any previous settlement, and a deed be *afterwards* made between the parties, *declaring the uses to which the same shall be applied*, this will be equally good, as if it had been expressly levied or suffered in consequence of a deed directing its operation to those particular purposes. For by statute 4 and 5 Anne, c. 16. indentures to *declare* the uses of fines and re-

coveries made after the fines and recoveries had and suffered shall be good and effectual in law, and the fine and recovery shall enure to such uses, notwithstanding any doubts that had arisen on the statute of Frauds 29 Car. II. c. 3. to the contrary. (b) If the use of part only of the property or estate of the owner be declared, it will result for the residue; (c) and if a tenant in tail suffer a recovery, without any consideration or declaration of the use, it will result to him in fee. (d) But the use will not result, if it appear to be the intention of the party that it should not. (e) It seldom happens, however, that a party levies a fine, or suffers a recovery, without executing a deed leading or declaring the uses of it. Indeed the course now is always to have a deed, (f) not only for the purpose of declaring the uses, but also to ascertain precisely the particular lands intended to pass; as the writs of covenant and entry, and consequently the fine on the former, and the recovery upon the latter, only comprise them by their general descriptions. The quantity to be passed is, therefore, governed by these deeds. (g) The deed to lead the uses is most

(b) 2 Comm. c. 21.

*Anglesea*, Gilb. Rep. 16.

(c) *Woodliffe v. Drury*, Cro. Eliz. 429.

(f) For the deeds, see Appendix. I. to V.

(d) 1 Sanders, Uses and Trusts c. 2.

(g) *Eyton v. Eyton* and Others, 4 Brown's Parl.

(e) *Lord Altham v. Earl of*

Cases 149.

usually made ; for when a fine is to be passed, it is generally covenanted to be levied in some previous, usually the purchase or other deed made on the occasion wherein the uses are limited ; and when a recovery is suffered merely for the purpose of converting an estate tail into a fee simple, the use is limited in the conveyance to make the tenant to the præcipe. So where a recovery is to be passed on a sale of the lands, the uses are limited in the conveyance to the purchaser. And as previously to passing a fine or recovery these uses may be varied, or revoked, (*h*) if there be more deeds than one, the uses will be guided by the last deed : (*i*) but it must be executed by all the parties to the former deed. (*k*) When the fine or recovery differs from the previous deed, limiting the uses of it, either in time, (*l*) person, or other circumstance, then other uses, than those limited already, may be declared by another instrument ; (*m*) although it be not a deed, but a mere writing without seal, and although all the persons interested under the first limitation of uses are not parties to the second. (*n*) The deed to

(*h*) 1 Sanders Uses and 1 Atk. 2. 10.

Trusts, c. 2.

(*l*) *Ibid.*

(*i*) *Jones v. Morley*, 1 Ld.

(*m*) *Touchstone*, c. 24.

Raymond's Rep. 287.

(*n*) 1 Sand. Uses and Trusts,

(*k*) *Stapilton v. Stapilton*,

c. 2.

lead or declare the uses may be either by indenture or deed poll, (a) and no consideration is necessary, (p) but it must be certain and complete; (q) though very slight expressions are sufficient to lead or declare the uses, no formal set of words being requisite. (r) And it is by no means certain that a declaration of uses, executed after a fine or recovery has been levied or suffered, may not be controlled by a subsequent deed. To the preceding observations relative to the deed leading or declaring the uses of fines and recoveries, it may be useful to add that every heir at law has a right to inquire by what means he is disinherited, and to have the deeds and writings disinheriting him deposited in proper hands for his inspection. (s) Therefore, a party interested is entitled in a Court of equity, on a bill for the purpose, to a discovery of the deed, declaring the uses of a fine; and a plea of the fine and long possession under it will be no bar to the discovery. (t) So the party interested is in like manner entitled to an inspection of the recovery deed, to see whether any thing can be discovered from it to his

(a) Sand. Uses and Trusts, c. 2. (s) *Morrison v. Uxor* 7,

(p) *Jones v. Morley*. Southcote and Another, 1

(q) Touch., c. 2. Atk. Rep. case 266.

(r) Sand. Uses and Trusts, (t) *Holt v. Dowd & Brown's*  
c. 2. P.C. 360.

advantage ; and on the coming in of the answer acknowledging the possession of the deed, he may obtain an order on motion, either for it to be left with the clerk in Court, (y) or to be brought into the master's office. (z) He may also inspect the writs and other proceedings in the offices where they are respectively deposited, and have such office copies and extracts of them as he may think proper.

- (y) *Bettison v. Farringdon* and Others, 3 P. Wms. 363.      (z) *Earl of Suffolk v. Howard*, 2 P. Wms. 117.

## CHAPTER IV.

## OF THE AMENDMENT OF FINES AND RECOVERIES.

FINES and recoveries may under the authority of the 8 Hen. VI. c. 12. be amended by the Court where any palpable mistake or misprision has been made by the officers of the Court, when there is any thing to amend by ; (a) and as the præcipe is the cursitor's instructions for an original writ, so a deed to lead the uses is considered as his instructions for a fine or recovery. (b) By the above statute a mistake in the *form*, (c) *teste*, (d) or *return*, (e) of a writ of covenant for levying a fine, or writ of entry for suffering a recovery, (f) may be amended where the mistake was occasioned by the misprision of the clerk, and there is any thing to

(a) *Wynne d. Thomas*, t.  
*Apperley v.*, Barnes' notes  
17. Willes 563.

(b) Barnes' notes, 22.

(c) *Cook v. Milles*, 4 Taunt.  
644. *Gill v. Yates*, Ib.  
708.

(d) 5 Rep. 44, 5.

(e) Ca. Pr. C. P. 127. But  
the return of a writ of co-

venant was not permitted  
to be amended by changing  
it from Trinity to Easter  
Term, the deed to lead  
the uses being colourable,  
and the fine taken from a  
dying woman. *Lindsay v.*  
*Gray*, 2 Black. 1013.

(f) 5 Taunt. 259. 8 Taunt.  
197.

amend by: but otherwise it seems not to be amendable. (g) The manner of procuring the amendment to be made in term time is, for the party interested to apply to the Court by motion, which may be made any day that the Court is sitting, (except the last day of term,) (h) for an order to make the desired amendment, on an affidavit, (i) of the circumstances, (k) accompanied by the deed to lead or declare the uses, or make the tenant to the præcipe, as it must appear upon the face of the deed when there is one, that there is sufficient ground for the application. (l) Upon reading the deed (m) and affi-

(g) *Waller d. Hinde*, t.

*Bland v. 8 Taunt.* 104, 5.

(h) The Court will not entertain any motion for the amendment of fines or recoveries, or on any subject relating thereto, on the last day of Term. Rule H. 60 G. 3. and 1 G. 4. C. P. See 5 Taunt. 856. 1 Brod. and B. 468. 2 Brod. and B. 122. Appendix S.

(i) *Fawcett v. Lowe*, 6 Taunt. 432. But the Court permitted parcels to be added in an old recovery, without an affidavit, it appearing by the deeds

that they were intended to pass, and the possession having gone accordingly. *Tennyson d. Goulton*, t. *Rousby*, v. 3 Taunt. 408.

(k) In a late case, the Court declared that when a fine or recovery was moved to be amended, they would always require an affidavit, that the possession had been in conformity with, and had followed the deed since such fine or recovery was levied or suffered. *Ince v. 6 Moore*, 259.

(l) *Pearson d. Pearson*, t. *Brougham v. 1 H. Black.* 73.

(m) Previous to the motion

davit, the Court sometimes grant a rule for the other parties interested to shew cause why the amendment should not be made; which, after hearing counsel against it, or by consent, or on an affidavit of service, if the other parties do not appear, is commonly made absolute. But, in a plain case, the Court will order the amendment to be made in the first instance: (*n*) indeed the application is now most usually granted, if at all, without a rule to shew cause. In vacation a Judge at Chambers will make the requisite order in common cases; and upon producing such order of the Court, or of the Judge, (*o*) to the several officers of the Court, (*p*) at the same time leaving a copy with each of them, they will make the amendment accordingly.

being made, the material part of the deed should be scored under, and a tick put opposite to it in pencil in the margin; and it must be read either by a serjeant or by the officer of the Court, but not by the solicitor for the amendment. *Hurst* d. *Forster* t. 5 Taunt. 579.

(*n*) *Corden* d. *Hall*, t. *Colclough* v. 2 New Rep. 431.

(*o*) For an order of the Court, and also of a judge, see Append. LXIII.; LXIV.

(*p*) The officers concerned in the amendment of a fine are, the cursitor, the alienation commissioners, the *custos brevium*, king's silver, and the chirographer,—of a recovery, the cursitor, the alienation commissioners, the *custos brevium*, and the prothonotary.



Fines may in general be amended by the deed to lead or declare the uses, (q) in the names of the parties, (r) or in the description of the premises; (s) or of the place where they are situate. (t) And in a late case, (u) the Court permitted a fine to pass as to all the cognizors, except one, whose acknowledgment had been taken incorrectly, and whose interest was so inconsiderable that the parties did not think it worth while to have another fine. So the Court allowed the warranty in a fine to be amended, by altering it from a warranty by the husband and wife and *the heirs of the husband* to a warranty by the husband and wife and *the heirs of the wife*. (v) But where there was no deed

- (q) *Manley v. Tattersall*, 4 Taunt. 257. *Rowlitt v. Orlebar*, 6 Taunt. 73. *Grey v. Wainwright*, 1 Marsh. 578.
- (r) *Clarke v. Barron*, 6 Taunt. 586. 8 Taunt. 20. *Dobson v. Dewar*, 1 Brod. and B. 15. *Ex parte Motley and Wife*, 2 Bos. and P. 455. *Bye v. Haywood*, 1 Moore, 125.
- (s) Cas. Pr. C. P. 10. *Manley v. Tattersall*. *Gill v. Yeates*. *Carey v. Bellingfield*, 6 Taunt. 276. *Frost v. Hale*, 7 Taunt. 79. *Anon.* 8 Taunt. 74. *Wilmoth v. Clarke*, Ib. 335.
- (t) Cas. Pr. C. P. 10. 52. 121. *Barnes* 216, 24. *Payne d. Nathaniel t. Hodges* v. 3 Taunt. 396. *Shelley v. Millar*, 6 Taunt. 162. *Stubbs v. Stevenson*, 8 Taunt. 87. *Clemmel v. Storer*, Ib. 692. *Colkins v. Brown*, 4 Moore 170.
- (u) *Anon.* 5 Taunt. 243.
- (v) *Hannaford v. Pearce*, 1 Brod. and B. 68.

to declare the uses, the Court would not permit an alteration to be made in the christian (*w*) or surnames (*x*) of the parties. If the name of a party be written on an erasure, this being a suspicious circumstance must be explained by affidavit, before the amendment can be made, (*y*) although the party had signed his proper name at the foot of the deed. (*z*) The Court would not allow the number of acres to be inserted in a fine, where the deed was general, and the intent proved only by affidavit. (*a*) And where, in the deed to lead the uses, the estate was described as consisting of 35 acres in the whole, and the fine was levied of 30 acres of land, 12 acres of meadow, and 25 acres of pasture, the Court refused to amend the fine, by increasing the quantity of each description of land, so as to make each cover the whole quantity intended to be conveyed. (*b*) So where a fine comprised only lands lying in the parishes of S. and S. within a larger district, the deed so describing the lands, which were in truth in the parish of

(*w*) *Dixon v. Lawson*, 2

Black. Rep. 816.

(*x*) *Ex parte Motley and wife*.

(*y*) *Clennell v. Storer. Dobson v. Dewar*.

(*z*) *De Warre v. Bryan*, 3

Moore 241.

(*a*) *Powell v. Peach*, 2  
Black. Rep. 1202.

(*b*) *Bartram v. Towne*, 6  
Taunt. 58. and see *Owen v. Owen*, 3 Moore 70.

F. in the same district, the Court refused to amend the fine by inserting also the parish of F. (c) And where the concord of a fine by mistake varied in the number of messuages to be conveyed, from the writ of covenant and præcipe, the Court refused to amend it *in fieri*, and pass it as being the agreement of the parties, who were still alive, but left them to their remedy by a new caption, or by reacknowledging the concord after it was amended. (d) So if there be two præcipes to a fine, and the premises be described in one as manors, tythes, and tenements, and in the other as tenements only, the Court will not allow the fine to pass. (e) In one case the name of a parish was allowed to be inserted in a fine upon seeing that they were comprehended in the deed to lead the uses; although, on account of the length of time which had elapsed since the date of the deed, no one could swear that the parcels lying in that parish were intended to pass. (f) And the fine was amended in another case by inserting a parish different from that which was named in the deed to lead the uses, it being certain by the deed which specified the quantities and occu-

(c) *Cotterell v. Franklin*, 6 Taunt. 284.

(e) *Swinburne v. Swinburne*, 3 Moor 210.

(d) *Clutterbuck v. Brabant*, 6 Taunt. 1.

(f) *Gladwyn v. Brown*, 2 Taunt. 1.

piers, that the land was intended to pass. (g) In another case a fine was amended by striking out the names of the parishes in which the lands were erroneously described to be situate. (h) And two fines of different shares in the same lands were allowed to be amended by stating them to be situate in "A," instead of "*in the parish of A,*" there being no such parish; the deed to lead the uses of the former fine being correct, that of the latter containing the same mistake as the fine. (i) A fine may be amended by substituting one county for another, if it appear that the lands intended to pass are situate in the same parish which runs into both counties. (k) An amendment however cannot in general be made by transposing parishes from one county to another. But where a parish was misdescribed by name in a fine and deed to lead the uses, the former was allowed to be amended by substituting the right name, the deed containing general words, under which the premises in such parish might pass. (l) A fine may be

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|---|---|
| (g) <i>Lambe v. Reaston</i> , 5 Taunt. 207.   | <i>son v. Same</i> , 1 Marsh 512.                                   |
| <i>Flower v. Bainwright</i> . <i>Ib.</i> 303. | (k) <i>Stubbs v. Stevenson</i> , 8 Taunt. 87. But see <i>contra</i> |
| (h) <i>Payne v. Garrick</i> , 1 Marsh 468.    | <i>Gill v. Yeates</i> , 4 Taunt. 708. <i>Anon.</i> 3 Taunt. 418.    |
| (i) <i>Shelley v. Miller</i> . <i>John-</i>   | (l) <i>Anon.</i> 6 Moore 520.                                       |

amended where there has been a mistake in the entry of the king's silver, (m) or of the proclamations, (n) or a fine with double operation by striking out the lands in reversion; (o) and where the concord of a fine was lost, before it had passed the *custos brevium* office, a new concord and acknowledgment was permitted to be prepared and the fine to be perfected; (p) So where the original præcipe and concord were lost, the fine was allowed to pass by a copy of that left with the chief justice, and signed by the parties. (q) But although the Court will amend a fine in matters of form; yet, when it is recorded of one term, they will not alter it, and make it a fine of another. (r) Where the name of the wife appeared to have been struck out of the præcipe, although there was an affidavit of husband and wife that both were present and did appear at bar, but the secondary had counted at bar the husband only, the Court refused to amend the caption by inserting the name of the wife; and directed that as the fine was of the last term only, the wife should come up to reac-

(m) 5 Rep. 43.

(n) *Ibid.* 44.(o) *Moyn v. Sharpe*, 5 Taunt. 331.(p) *Wright v. Wright*, 4 Taunt. 1195.(q) *Edlin v. Johnson*, 6 Taunt. 231.(r) *Heath v. Wilmoth*, 2 Black. Rep. 788, Vin.

Ab. tit. Fines, c. 16.

knowledge the fine. (s) The heir of a cognizor may be heard to oppose a fine being amended to his disherison. (t)

Recoveries may in like manner be amended by the deed to make the tenant to the præcipe or lead the uses, by *striking out*, (u) *altering*, (v) *adding to*, (w) *or transposing*, (x) *the names of the parties*; and the Court ordered a recovery to be amended where it was intended to be suffered by A. B. and C., his wife by adding the name of the wife which had been totally omitted. (y) So a recovery may be amended *in fieri* by substituting a new commissioner for the name of the demandant in the *dedimus potestatem*,

(s) *King v. Steddel*, 8 Taunt. 87.

(t) *Lambe v. Reaston*.

(u) *Rawlings d. Price t. Tom*, v. 3 Taunt. 59.

*Morris and Desse d. 5 Taunt. 73. Cheeseman d.*

*Sykes t. Denn v. 7 Taunt. 697.*

(v) *Cas. Pr. C. P. 127.*

*Pigot*, 170, 1, 2. *Mayre d.*

*Coulthard, t. Goodwin v.*

*Black. Rep. 1230. Dawson d.*

*Stocker t. Brooke*

*v. 8 Taunt. 226. Bird*

*d. Quilter t. Tindal v. Ib.*

556. *Edge d. Taylor t.*

*Warren v. 2 Brod. and*

*B. 98.*

(w) *White d. Gregory t.*

*Herne v. 8 Taunt. 27.*

But see *Bradley v. 3*

*Moore 577.*

(x) *Lord d. Biscoe t. Ayles*

*v. Barnes 24. Roberts d.*

*Robinson t. 2 Taunt. 222.*

*Shepherd d. James t.*

*Boughton v. 4 Taunt.*

*226. : but only upon pro-*

*ducing the documents.*

*Massey v. 6 Moore 46.*

(y) *Cas. Pra. C. P. 127.*

and retaking the acknowledgment. (z) But the Court would not amend a recovery by inserting the name of the husband of the vouchee: (a) nor by substituting the name of one joint tenant to the præcipe for that of his companion. (b) And a recovery cannot be amended by inserting an additional christian name of the vouchee if he has always been known, and has signed the deed to make a tenant to the præcipe, without such name. (c) But a warrant of attorney in a recovery was amended in one case by inserting an additional christian name of the vouchee; (d) and in another, by substituting the name of the attorney for that of the vouchee, which had been inserted by mistake instead of the attorney's. (e) But it is now settled that the Court will not amend a warrant of attorney, because it is the act of the party; (f) and therefore they refused to amend a recovery by adding the name of one of the parties which had been omitted in the warrant of attorney, nor would they suffer the recovery to pass with this defect. (g) The

(z) *Rawle d. Pyke t. Mil-  
ler v. 5 Taunt. 747.*

(a) *Parsons d. Abbott t.  
Knight v. 1 Taunt. 478.*

(b) *Buswell t. 4 Taunt. 101.*

(c) *Shaw d. Spence, t. Hunt  
v. 8 Taunt. 645.*

(d) *O'Brien v. 4 Taunt. 196.*

(e) *Shaw d. Le Blanc, t.  
Ramsay v. 4 Taunt. 98.*

(f) *Forster d. Forster, t.  
Bolton v. 6 Taunt. 373.*

(g) *Fox d. Benbow t. Gomer  
v. 6 Taunt. 652.*

præcipe for the writ of entry however at the head of the warrant of attorney is not so conclusively a part of it, but that it may be amended after the execution of the writ of entry: (h) and where in the body of the vouchee's warrant of attorney in a recovery it was omitted to be expressed against whom the plea of land was which appeared by the præcipe, the Court, though they would not amend the warrant of attorney, held that the authority must refer to the plea as described in the præcipe, and permitted the recovery to pass. (i) So a recovery was permitted to pass where the warrant of attorney did not state between whom the plea of land was, it being evident from the præcipe for what purpose the attorneys were appointed; (k) and also where the warrant of attorney was "*in a plea of land*," omitting the words "*to gain or lose*." And if a wrong surname of the demandant be inserted by mistake in the warrant of attorney

(h) *James d. Williams, t. James v. 7 Taunt. 434.*  
 1 Moore 180. S. C.; in the reports of this case, the præcipe for the writ of entry is inaccurately called the caption of the warrant of attorney. *Cox d. Ince t. Gill v. 1 Bing. 22.*

*Smale d. Bremridge t. Adams v. Ib. 72.*

(i) *Foster d. Foster t. Bolton v. 6 Taunt. 373.* and see 7 Taunt. 475. in note.  
*Lees d. Randall t. Grimes v. 8 Taunt. 164.*

(k) *Alexander t. Palmer d. House v. 8 Taunt. 164.*



and subsequent instruments, the Court will allow the recovery to pass upon the production of a new warrant of attorney, rectifying such mistake, and on depositing the other instruments with the officer in the mean time. (l) But where the præcipe in the vouchee's warrant of attorney rightly described the parties to the plea, but the body of the warrant of attorney expressed that the vouchee appointed the attorney, to gain or lose in a plea of land against the tenant instead of the demandant, the Court refused either to amend the warrant of attorney, or to suffer the recovery to pass, and construe the latter clause as repugnant and inoperative. (m) So they would not direct their officer to pass a recovery where there was a mistake in the form of the entry to which the warrant of attorney related, by making it a demand instead of a præcipe; nor would they permit the mistake to be rectified by amending the warrant of attorney. (n) Recoveries may also be amended by the deed to make the tenant to the præcipe, in the *description of the premises*, or of the *place*

(l) *Shepherd d. Brewer t.*  
*Shepherd v.* 3 Moore, 673.

(m) *Morell d. Alban t.*  
*Hatchett v.* 1 Brod. and  
B. 92. But see *Ibid.*  
343. where the warrant

of attorney was allowed  
to be amended by insert-  
ing the word "*land*" in-  
stead of "*trespass*."

(n) *Baxter d. Bowker t.*  
*Swinfen v.* 8 Taunt. 157

where they are situate. (o) In the former case a recovery may be amended by inserting other premises not mentioned therein, if they be comprised in the deed to make the tenant to the præcipe, or lead the uses, on payment of an additional fine at the alienation office; (p) and a recovery has been amended by increasing the quantities of specific closes, described in the

(o) *Cas. Pr. C. P.* 9. 10. 17.

30. *Com. Rep.* 386. *S. C.*

*Cas. Pr. C. P.* 85. *Loggin*

*d. Rawlins t. Pullin v.*

2 *Barnes* 21. *Henzel d.*

*Lodge t. Lawson v. 3*

*Black. Rep.* 747. *Watson.*

*d. Cox t. Crowle v. Ib.*

1065. *Wheeler d. Hill t.*

*Heseltine v. 2 Bos. and*

*P.* 560. *Dowse d. Lloyd*

*t. Reeve v. Ib.* 578. *Bax-*

*ter d. Baxter t. Newman*

*v. 4 Taunt.* 249. *Jacob d.*

*Devonshire v. Ibid.* 737.

*Kinderley d. Domville t.*

*Bamfylde v. 1 Taunt.* 257.

*Rolfe d. Lacon t. An-*

*guish v. 5 Taunt.* 2. *Blake*

*d. Saffery t. Pooley v. Ib.*

624. *Pinder d. Meredith*

*t. Baker v. Ib.* 661. *Sid-*

*ney d. Hulme t. Austen*

*v. 6 Taunt.* 177. *Copland*

*d. Bigg t. Thompson v. 8*

*Taunt.* 86.

(p) *Cross d. Grey t. Pead*

*v. 1 Bos. and Pul.* 137.

*Dowse d. Lloyd t. Reeves*

*v. 2 Bos. and Pul.* 578. *Mil-*

*banke v. Jolliffe, Ibid* 580.

*notis.) Carew v. 1 Taunt.*

355. *Brett d. Smith t.*

*Honeywood v. Ib.* 484.

*Shaw t. Hawkins v. 3*

*Taunt.* 74. *Horne d. Lodge*

*t. Preston v. Ib.* 462.

*Strong d. Still t. Drake v.*

*4 Taunt.* 155. *Collier d.*

*Chesterfield t. Ib.* 226.

*Horne d. Rossiter v. Ib.*

366. *Colville d. Denison*

*t. Acton v. Ib.* 740. *Ex*

*parte Bullock, 5 Taunt.*

748. *White d. Bicknell t.*

*Papillon v. 8 Taunt.* 303.

*Grwynne d. Heathcote t.*

*Camfield v. 2 Moore* 163.

deed as being less than they really were. (q) But the Court will not permit a recovery to be amended by increasing the quantity of land, if the deed to lead the uses contain terms sufficient to comprehend the whole; though it may have been described as a few acres less than the actual modern admeasurement, both in the deed and the recovery. (r) And no amendment can be made in the description of the premises where it is not warranted by the deed to lead the uses; (s) nor unless the true number of messuages, &c. be distinctly and precisely sworn to; (t) nor without proof of seisin by the vouchee of an estate tail therein at the time of the recovery suffered, and that it was intended they should pass. (u) So a recovery was not per-

(q) *Alexander d. Bleasdale t. Hanford* v. 4 Taunt. 734. But see *Stone v. Ashby*, 5 Taunt. 616.

(r) *Marryatt d. Elmore t. Shard* v. 6 Moore 50.

(s) *Phillips v. Jones*, 3 Bos. and P. 362. In this case the lease contained the word "*tithes*" which was omitted in the release; and the Court refused to amend the writ of entry by inserting that word, although

the release contained the words, "*and also all houses, ways, &c. hereditaments and appurtenances whatsoever to the said messuages, lands, &c. belonging or in any way appertaining.*"

(t) *Vanderzee d. Ince t. Latson* v. 5 Taunt. 632.

(u) *Dalton d. Greg* t. 5 Taunt. 811. *Barlow d. Macdougall t. Barlow* v. 1 Brod. and B. 69.

mitted to be amended on an unqualified affidavit that the possession had gone with the title for a period long before the deponent's knowledge without stating the grounds of his belief. (v) And where a recovery fifty years old was found by mistake to comprize only two messuages and twenty acres of land, instead of six messuages and three hundred acres of land, the blunder being wholly unexplained and unaccounted for, the Court refused to permit an amendment by substituting the larger quantity. (w) If marsh land be described as land generally in a recovery, it may be amended by inserting the word "*marchy*" before "*land*" on an affidavit stating how the premises had been occupied since the recovery was suffered. (x) So a recovery of land may be amended by inserting "*meadow and pasture*." (y) But if *woodland* be converted into *arable*, the Court will not allow an amendment by increasing the quantity of the latter, as the land would pass under either description. (z) A recovery may be amended by inserting a rent-charge, (a) fee farm

(v) *Noble* d. 7 Taunt. 697.

(w) *Collingwood* d. *Wilmot*  
t. *Lord Howe*, v. 1 Brod.  
and B. 83.

(x) *Phillips* d. *Field* t.  
*Rolfe* v. 5 Moore 98.

(y) *Fricker* d. *Fairbank* t.  
*Bishop* v. 1 Bing. 22.

(z) *Webber* v. *Grey*, 5  
Moore 94.

(a) *Brett* d. *Smith* t. *Honey-*  
*wood* v. 1 Taunt. 484.

rent, (b) or tithes, (c) where it appears that they were intended to pass; and the words of the deed are sufficiently comprehensive to include them; or by substituting the words "*advowson of the church*" for the word "*rectory*," (d) or the words "*perpetual advowsons*" for those of "*tithes to rectories belonging or appertaining*." (e) But a recovery which was suffered 70 years ago was not allowed to be amended by inserting "*an advowson*," although it was omitted by mistake, and had formed part of the estate since the recovery was suffered, without an affidavit stating how the presentations had gone from that time to the application for the amendment. (f) And an amendment was refused by striking out the aggregate sum of several rents, and inserting the different sums or rents of which it was composed: (g) nor will the Court permit a recovery to be amended by adding the "*tithes*" of the premises under the

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| (b) <i>Times</i> d. <i>Meredith</i> t.          | <i>Blackburn</i> v. 8 Taunt.              |
| <i>Edwards</i> v. 5 Moore 474.                  | 333. <i>Palmer</i> v. 6 Moore             |
| (c) <i>Corden</i> d. <i>Hall</i> t. <i>Col-</i> | 53.                                       |
| <i>clough</i> v. 2 New Rep. 431.                | (e) <i>Williamson</i> d. <i>Meggison</i>  |
| <i>Cullum</i> d. <i>Ryder</i> t. <i>Vernon</i>  | t. <i>Beaumont</i> v. 4 Moore 49.         |
| v. 7 Taunt. 341. <i>Lancaster</i>               | (f) <i>Colclough</i> d. <i>Praed</i> . t. |
| d. <i>Wilmot</i> t. <i>Boone</i>                | <i>Savage</i> v. 7 Moore 257.             |
| v. <i>Ib.</i> 352. <i>Coventry</i> v. 6         | (g) <i>Domville</i> d. <i>Kinderlye</i>   |
| Moore 224.                                      | t. <i>Coventry</i> v. 2 Marsh             |
| (d) <i>Coore</i> d. <i>Spragg</i> t.            | 264.                                      |

word "*hereditaments*," where that word does not occur in the operative part of the deed; or even where it does, if there be not satisfactory evidence to shew that the parties to the recovery were in possession of the tithes: (*h*) nor by striking out a "*portion of tithes*" and substituting "*all the tithes*," arising from the lands conveyed. (*i*) In regard to the situation of the premises, recoveries have been amended by substituting a hamlet for a parish, (*k*) or part of a parish which lay within a liberty for other part of a parish, which lay within a borough in the same county; (*l*) and by inserting the name of the parish of A. where the recovery was of lands in the parish of B. and C. or any adjoining town, A. being contiguous to B. and C. (*m*) So a recovery of the manor of A. and eight messuages in A. was amended by adding the names of the parishes in which the premises were partly situated, those parishes being comprised in the manor of A. (*n*) So where lands in two

(*h*) *Garle d. Oram t. Ma-  
son v. 2 Marsh 194. Phil-  
lips d. Noun t. Lisle v.  
2 Brod. and B. 105.*

(*i*) *Ross d. Wilchew t. Worge  
v. 6 Taunt. 489. But see  
2 Marsh 264.*

(*k*) *Willis d. Culbert t. Bar-  
tholomew v. 1 Moor 131.*

(*l*) *Payne d. Nathaniel t.  
Hodges v. 3 Taunt. 396.*

(*m*) *Baxter d. Baxter t.  
Hawkins v. 8 Taunt. 191.  
Sykes d. Knowles t. Gal-  
way v. Ib. 262.*

(*n*) *Dowse d. Lloyd t. Reeve  
v. 2 Marsh 330.*

parishes were conveyed as lying in the parish of G. which was not the true name of either nor of any parish, but was an addition equally applicable to both, the Court permitted both parishes to be added to an old recovery. (o) And where a deed to make a tenant to the præcipe comprised tithes in two parishes, and an amendment had been improperly introduced in the recovery which confined its operation to one parish only, the Court allowed the words of such amendment to be transposed so as to give effect to the deed, and comprize both parishes. (p) So a recovery may be amended by substituting the parish of A. for B. if the deed to lead the uses comprehended all the estates of the vouchee situate in the county where such parishes lie. (q) So a recovery has been amended by altering the name of a parish misnamed in the deed making the tenant to the præcipe as well as in the recovery, upon an affidavit that the vouchee was seized of the land in question in one parish, and that he was seized of no land whatever in the other. (r) And a recovery was amended in a

(o) *Jacob d. Devonshire t. 4* 237.

*Taunt. 737. Blake v. Saffery, 5 Taunt. 624.*

(p) *Lancaster d. Wilmot t. Boone v. 7 Taunt. 352.*

(q) *Greenaway v. 2 Moore*

(r) *Flower v. Bainwright 5 Taunt. 203. Scilly d. Smith t. Barnard v. 8 Taunt. 244. Sykes d. Knowles t. Galway v. Ib. 262.*

modern case by inserting "*the county of the town of S.*" for "*the county of S.*," the Court considering it merely as a clerical misprision; (s) and in another case by inserting the words "*the county of the*" before those of "*city of C.*" (t) But when the situation of the premises is mistaken in the deed to lead the uses, it cannot be amended by the Court. (u) And they would not permit a recovery to be amended by inserting a parish not named in the deed to make a tenant to the præcipe, although it appeared that the parish was named in the instructions given for preparing that deed; and that the lands were parcel of an estate which was intended to pass, for by the omission in the deed there could be no good tenant to the præcipe. (v) So the Court refused to amend a recovery, by adding two parishes in unqualified terms, where the deed enumerated several manors and a great extent of lands in many parishes, and the purpose of amendment was only to include certain parcels of one manor which lay in the omitted parishes. (w) And they will not amend a recovery by inserting more parishes, unless it be clear that

(s) *Rashleigh d. Lee t. Smith*  
v. 4 Taunt. 855.

(t) *Hill* v. 6 Moore 259. in  
notis.

(u) *Steele d. Clennell t.*

*Benn* v. 6 Taunt. 145.

(v) *Clutterbuck d. Debary*  
t. *Langton* v. 2 Taunt. 96.

(w) *Charter d. Shepherd t.*  
*Gwynne* v. 7 Taunt. 177.



the land in those parishes passed by the deed; (x) nor unless it appear to be absolutely necessary. (y) So they refused to amend a recovery by altering the name of the parish in which the land was described to be situated, where the deed to lead the uses had described it to lie in a parish in which it was not situated, though strong collateral evidence was adduced to shew that the lands in the recovery lay in the parish proposed to be inserted,—because there was no expression in the deed by which the amendment could be made. (z) Though in a case where a wrong parish had been inserted in a recovery and deed to lead the uses, the Court permitted the recovery to be amended by substituting the parish of W. for S. upon affidavit that the property was actually in the parish of W.; that in an old settlement in tail, it had been described correctly as to the parish, but in all other respects as in the deed to lead the uses, and that the premises had ever since been enjoyed consistently with the deed. (a) But where a recovery was suffered in the *city of Litchfield*, which is a county of itself, the vouchee having lands there, upon which it might operate, the Court

- (x) *Kinderley d. Domville* *Barney v. 8 Taunt. 683.*  
*t. Bamfylde v. 4 Taunt.* (z) *Lord Elliott v. 1 Bing.*  
 738. 425.  
 (y) *Howman d. Orchard t.* (a) *Anon. 2 Bing. 93.*

would not suffer it to be amended by striking out the *city of Litchfield*, and inserting the county of *Stafford*, with other consequential amendments, and also by inserting the name of a vill after another mentioned in the recovery: (b) nor can a recovery be amended so as to make it of premises in one of two counties in the alternative, (c) nor by changing it from one county to another. (d) So where a vouchee had in his instructions to suffer a recovery, and in a deed to lead the uses prepared in pursuance thereof misdescribed the parish in which certain closes were situate, though they were described in the deed with truth and certainty, in other respects the Court refused to substitute the parish in which the lands lay for the parish named in the deed and recovery. (e) A recovery was allowed to be amended by removing the words "*an in-bound common*," from a line in which they had been inadvertently inserted, and where they had no meaning, to the line in which they ought to have stood. (f) A remainderman in tail may be heard to shew cause against the amendment of

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| (b) <i>Aston d. Baldwin t. Sprott v.</i> 2 Black. Rep. 874.  | (d) <i>Anon.</i> 3 Taunt. 418.<br><i>Copland d. Biggt. Thompson v.</i> 8 Taunt. 87. |
| (c) <i>Wainwright d. Sea-grave t. Smith v.</i> 1 Taunt. 538. | (e) <i>Steele d. Clennell t. Benn v.</i> 6 Taunt. 145.                              |
|  | (f) <i>Anon.</i> 1 Bing. 317.   |

a recovery. (g) And where the deed is lost, a recovery cannot be amended by an attested copy of the inrolment of the deed: but it may be amended by the inrolment itself being brought into Court, (h) And, on applying to amend a recovery, it is not necessary to shew a title to the Court further back than a seisin in tail of the vouchee. (i) The return of the writ of entry may be amended by adapting it to the time of taking the acknowledgment. (k) But the Court will not enlarge the return of a writ of summons, so as to make a term intervene between the teste and the return. (l) Though in one case the return of a writ of summons was allowed to be altered by inserting a subsequent return day when there were several vouchees residing in different counties, and one of them owing to sickness could not sign the warrant of attorney until a day after the writ of summons was first made returnable. (m) And the Court refused to make an order compelling the amendment of a recovery suffered by an insolvent

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| (g) <i>Lancaster d. Wilmot t.</i> | <i>Blizard t. Miller v. 8</i>      |
| <i>Boone v. 7 Taunt. 352.</i>     | <i>Taunt. 197.</i>                 |
| (h) <i>Dawney d. Newsome t.</i>   | (l) <i>Gibbons d. Stevenson t.</i> |
| <i>Downe v. 4 Taunt. 798.</i>     | <i>Stevenson v. 2 Black. Rep.</i>  |
| (i) <i>Sumcox d. Wakeford t.</i>  | <i>1223, 1224. Waller d.</i>       |
| <i>Marshall v. 4 Taunt. 155.</i>  | <i>Hinde t. Bland v. 8 Taunt.</i>  |
| (k) <i>Hinde d. Milne t. 5</i>    | <i>104.</i>                        |
| <i>Taunt. 259. Bruin d.</i>       | (m) <i>Osborne v. 7 Moore 269.</i> |

debtor. (n) The judgment in a common recovery has been amended by striking out the word "*adjudged*," and inserting instead thereof the word "*considered*." (o) And amendments have been made in the award and return of the writ of seisin. (p) But by the statute 23 Eliz. c. 3. s. 10. none of the fines or recoveries theretofore levied, passed, or suffered, which shall be exemplified under the great seal according to the form of that act, shall, after such exemplification had, be in anywise amended. In a modern case, however, a recovery was allowed to be amended by describing the premises to be situate in the parish of A., in the city of B. and in the parish of C. in the county of the same city, according to the deed to lead the uses ; although they were described in the exemplification of the recovery to be situate in the parishes of A. and C. in the city of B. upon an affidavit that the possession had followed the deed. (q)

Where a fine is levied of an estate lying partly in one county and partly in another,

(n) *Sanderson d. Bessant t. Partridge v.* 8 Taunt. 105.

(o) *Barnes* 20, 22.

(p) *Cas. Pr. C. P.* 127. *Barnes* 23. *Watson d. Lockley t.* 2 Wils. 2. The preceding arrangement of cases relating to the

amendment of fines and recoveries, has been in a considerable measure adopted from the eighth edition of Mr. Tidd's *Practice*, whose general accuracy cannot be excelled.

(q) *Ince v.* 6 Moore 259.

though there must be separate writs of covenant, sued out in the several counties, yet all the premises may be united in one concord, and so in one fine, which is then called a double fine. (r) In the experience of motions for the amendment of fines and recoveries, it will be found, that there is scarcely any one of the expressions used by conveyancers in their enumeration of general words, which does not on some occasion or other afford the means of amending and perfecting a title. It is scarcely possible to cite the several expressions under which lands may pass by the general description in a deed, although they are not specifically designated: but wherever they have been clearly passed to the cognizee or tenant to the præcipe, the Court will in general permit the fine or recovery to be made co-extensive with the deed. It is however most obvious, that this is a case of the nicest and most serious inquiry; especially when it is recollected that the Court is called on instantaneously to decide that upon a motion, which, if it came on in the shape of an action, might engage an intelligent Judge and a special Jury for many hours in the closest attention; and

(r) If the parcels are situate in three counties, it is called a treble fine, and so on according to the number

of counties. For forms of præcipes of such fines, see Append. LXV. LXVII.

might also afterwards engage the Court on solemn argument, either on a motion for a new trial, or on a special case or special verdict; the latter of which might also go before a Court of ulterior resort. And it should not be forgotten either, that the Court cannot add one acre in a fine or recovery, without creating a most powerful additional muniment, for disinheriting the heir or issue in tail of so much of his freehold, which if the amendment had not been made he might possibly have recovered; that this is ordinarily done *ex parte*, without hearing any but the counsel for the application, and without notice to any party who may possibly be interested to dispute the right; and that it is done upon mere affidavit of the intention of the parties, at a period long since past, which intention must often rest upon presumption and circumstantial evidence only; as in the case of amending fines and recoveries which are one, and even two centuries old, and in which, all the parties being dead, affidavits of the intent can only be conjectural. Amendments of fines and recoveries are therefore among the most serious and important objects that can occupy the attention of the Court; and ought not to be allowed without the nicest inquiry, and most mature deliberation. They are by no means to be considered as a general remedy for the negligence of those

attorneys who having conducted the proceedings either carelessly or ignorantly themselves, or entrusted them to the inexperience of clerks, think they can wipe off all blots by a motion for an amendment. (s) Every respectable practiser will, both for his own credit and for the relief of the Court, abstain from preferring these motions, unless he can enable his counsel distinctly to shew upon his deeds and affidavits a title to support the amendment desired. And note, that in moving for amendments, it is material not to disgust the Court with an unnecessary exhibition of blunders, nor to divide and confound their attention with a multiplicity of frivolous points. A fine or recovery should comprize that which is sufficient only, though neither excess nor surplusage, nor even downright nonsense will vitiate, if all that is necessary to be passed be plainly and sensibly comprized. Mo-

(s) A fine not having been completed within the time required by the rule of Court, through the neglect of the agent, the Court refused to permit it to pass afterwards. *Lindo's case*, 5 Taunt. 305. And in a prior case, where a fine was not completed within the time on account of the

attorney concerned having mislaid the papers, the Court not only refused to permit it to pass afterwards; but directed a new fine to be levied at the attorney's expense. *Stone v. Stone*, 4 Taunt. 601. See also *Williamson d. Meggison t. Beaumont v. 4 Moore* 171.

tions for amendments therefore should be purely to supply such matters as are *absolutely essential*; and those errors which only disgrace the record, but do not impair the title, should pass unnoticed. In many cases the absurdities and incongruities displayed have been so gross, that the Court have absolutely refused to extend any aid to such an accumulation of errors, though they would have helped a single mistake.



## CHAPTER V.

OF THE REVERSAL, AVOIDANCE AND FALSIFICATION  
OF FINES AND RECOVERIES ; AND OF PROVING,  
STOPPING, AND SEARCHING FOR THEM.

FINES and recoveries being considered as judgments given in a Court of record, may be reversed by writ of error brought in the Court of King's Bench, unless the error be in the process, in which case they may be reversed in the Court of Common Pleas. No person has a right to bring a writ of error to reverse either of these assurances, unless he has an immediate interest in the lands affected by them. (a) The person therefore entitled to a writ of error to reverse a fine or recovery is he who would have had the lands, if the fine or recovery had not been levied or suffered ; which is in general the heir at law. (b) And it is not necessary

Of the reversal of fines and recoveries.

(a) Roll. Ab. tit. Error K.  
*Anon*, 5 Mod. 396.

Dyer 90 a. *Henningham*  
v. *Windham*, 1 Leon. 261,

(b) *Raynolds v. Dignum*,

that the person who brings the writ of error should deduce his title and pedigree, unless it be a special case varying from the common course; as where a writ of error is brought by a special heir in tail, or person in remainder. (c) But no person can have a writ of error to reverse a fine who took any estate by it, because no recoveror can bring a writ of error to defeat a record by which he himself has recovered: for the judgment in a writ of error is to avoid that which the plaintiff has lost; and it is held on this principle, that in a fine *sur done grant et render*, the cognizor cannot assign error in the grant and render, by which he himself has taken an estate. (d) And the right to bring a writ of error to reverse a recovery does not pass to the crown on an attainder for high treason. (e) The writ of error must be brought against some one of those who were parties or privies to the fine or recovery, and not against the tenant of the land only; (f) and writs of *Scire facias* ought to be issued against the terretenants and the heir, so that all parties interested in supporting the fine or re-

(c) *Champernoon v. Godolphin*, Cro. Jac. 150.  
*Sheepshanks v. Lucas*, 1 Burr. 412.

(e) *Winchester's case*, 3 Rep. 1.

(f) 1 Salk. 339. Holt's R. 614.

(d) 5 Rep. 39 b.

covery may be before the Court when the errors are examined: but the issuing of these writs is discretionary in the Court; and, therefore, a judgment of reversal would not be void for want of them. (g) The parol may demur for the infancy of the tenant in a writ of error to reverse a fine or recovery. (h) The errors for which fines and recoveries may be brought are either in fact, as that the cognizor or vouchee was an infant; or else in law, that is, on account of some defect appearing in the record. But by stat. 23 Eliz. c. 3. s. 2. it is enacted that no fine or recovery shall be reversed or reversable for false or incongruous Latin, rasure, interlining, misentering of any warrant of attorney, misreturning or not returning of the Sheriff, or other want of form in words, and not in matter of substance. And nothing can be assigned for error in a fine or recovery which contradicts the record, because records of a Court of justice are of such credit, that they can only be defeated by matters of equal notoriety with themselves; (i) and, therefore, although the circumstances assigned for error be fully proved by witnesses, yet such evidence

- (g) *Kingston v. Herbert*, 2 Show. 490. 3 Mod. 119. *Hall v. Woodcock*, 1 Burr. 359. (h) *Herbert v. Binion*, Cro. Jac. 392. *Aland v. Malone*, Fitz. 114. (i) 1 Inst. 260 a.

is inadmissible to impeach a record. So that if the entry of king's silver appear upon record before the death of the cognizor, no averment can be admitted against it; nor as to the time when a fine was acknowledged, which contradicts the chirograph; nor that the cognizor of a fine died before the *teste* of the writ of *dedimus potestatem*, if it appear by the certificate of the concord that he was alive. (*k*) But an averment of the death of the cognizor generally, before the ingrossment, entry, and recording of the king's silver, is admissible. (*l*) No incapacity in a vouchee can be assigned for error, where such vouchee appeared in person: but if he appeared by attorney, an averment may be made, that he laboured under some personal disability which rendered him incapable of suffering a recovery; as that he was within age, (*m*) or was an idiot, or insane, (*n*) or that the vouchee died before judgment was given. (*o*) By stat. 10 and 11 Will. III. c. 4. no fine or recovery shall be reversed or avoided for any error or

(*k*) Dyer 89 b.

*Stokes v. Oliver*, 5 Mod.

(*l*) *Wright v. Wickham*,

209.

Cro. Eliz. 468. *Arundel*  
v. *Arundel*, *ib.* 677.

(*n*) *Hume v. Burton*, Dom.  
Proc. Hib. 1785.

(*m*) *Holland v. Dauntzey*,  
Cro. Eliz. 739. *Darey*  
v. *Jackson*, Palm. 224.

(*o*) *Wynne v. Wynne*, 1  
Wils. R. 42.

defect therein, unless the writ of error or suit for the reversing of such fine or recovery be commenced, or brought and prosecuted with effect, within twenty years after such fine levied or recovery suffered. But if the person entitled to bring such writ of error be within the age of twenty-one years, covert, *non compos*, imprisoned, or beyond the seas, at the time when his title accrued, five years further, after the removal of such disability, is allowed to bring such writ of error or suit. A writ of error, therefore, to reverse a fine or recovery must be brought within twenty years after the fine or recovery has been levied or suffered, and not within twenty years after a title has accrued; for the time when the fine was levied is the period from which the twenty years are to be reckoned. (p) A person may bar himself from bringing a writ of error to reverse a fine or recovery, by releasing all his right in, or making a feoffment of the land whereof the fine or recovery has been levied or suffered; for by his release or feoffment he has for ever excluded himself from the land, and no person can have a writ of error who is not entitled to the land. (q) But if he release his right in, or make a feoffment of part of the land only, he

(p) *Lloyd v. Vaughan*, 2 Stra. 1257. (q) 1 Roll. Ab. 5 Cruise tit, 35. c. 14. s. 24.

may reverse the fine or recovery as to the remainder. (r) A recovery suffered after an erroneous fine, will bar the issue in tail of the person who levied the fine, from bringing a writ of error to reverse it, (s) because a recovery with voucher bars every kind of right which the vouchee or his heirs can have to the land of which it is suffered. In like manner if a person who suffers a recovery afterwards levy a fine, he cannot have a writ of error to reverse it. (t) If a fine or recovery be levied or suffered in the Court of Common Pleas of lands, held in ancient demesne, the lord may reverse it by writ of deceit. (u) But as no writ of error lies to reverse a judgment in a Court not of record, an erroneous recovery or judgment in these Courts can only be reversed by writ of false judgment in the Court of Common Pleas; and in the case of a copyhold Court, from which even a writ of false judgment does not lie, the remedy is by bill or petition, in the nature of a writ of false judgment. (v) In some cases the Court of Common Pleas will vacate and set

(r) *Wright v. Wickham*,  
ubi sup.

(s) *Barton v. Lever*, Cro.  
Eliz. 388.

(t) Pigot 169.

(u) *Rex v. Mead*, 2 Wils.  
17. *Rex v. Firebrace*,

Barnes's notes 258.

(v) 5 Cruise's Dig. 3d edit.  
252. *Smith v. Dean and*  
*Chapter of St. Paul's*,  
Show. Parl. cases 67. 1  
Vernon 367.

aside a fine upon motion, although the king's silver has been paid, and the fine completed, without putting the parties to the trouble and expense of a writ of error, in the same manner as they would set aside a judgment obtained by trick or surprize. (*w*)

A fine may be avoided by a *real action* <sup>Of avoiding a fine.</sup> commenced and prosecuted with effect within five years after it was levied: (*x*) but an action of ejectment not being a real action, will not avoid a fine; (*y*) neither will a bill in equity, unless the fine has been levied of a trust estate, in which case the claim to avoid the fine must be of a nature corresponding with the estate. (*z*) A fine may also be avoided by an *actual entry* (*a*) made *on the lands* (*b*) whereof it has been levied, if the person who seeks to avoid the fine have a right of entry: but if the right of entry be taken away and only a right of action remain, as where a fine operates as a discontinuance of the estate, there an actual entry on the land will not avoid the fine,

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| ( <i>w</i> ) 2 Show. cases 266.       | 2 Black. Rep. 994.  |
| <i>Hutchinson's case</i> , 2 Lev. 36. | ( <i>a</i> ) <i>Clarke v. Pymell</i> , 1 Saund. 319. Plow. 358. |
| ( <i>x</i> ) 4 Hen. VII. 1 Vent. 45.  | 1 Inst. 258 a. <i>Pollard v. Luttrell</i> , Poph. 108.          |
| ( <i>y</i> ) Comb. 249.               | Cro. Eliz. 561.   |
| ( <i>z</i> ) 1 Cha. Ca. 268, 278.     | ( <i>b</i> ) <i>Anon.</i> Skin. 412.                            |

but a real action must be brought. (c) No entry, however, is necessary, where the fine is levied without proclamations; for the stat. 4 Hen. VII. does not extend to such fine, and therefore it may be avoided at any time within twenty years. Nor is an entry necessary where the parties to the fine had no estate of freehold in possession of the lands whereof it was levied. (d) The entry must be made by the person who has the right to the lands, or by some one empowered by him; and it will be nugatory unless an action be commenced within one year after making it. (e) Where a fine is void *ab initio*, either as to every body or as to some particular persons only, its effect may be avoided by the plea, *partes finis nihil habuerunt*. (f)

Of falsifying a recovery.

The law allows all strangers, whose interests are affected by a common recovery, to falsify it, because, having no immediate estate or interest in the lands, they are incapable of bringing a writ of error to reverse it. Thus a recovery may be falsified and invalidated on a trial in ejectment; for if it be given in evidence and set up by way of defence, the plaintiff may shew any defect in the recovery; and if the Court be of opinion that it is void, and the plaintiff en-

(c) 1 Vernon. 213.

(f) Dyer 215 b. 2 Inst.  
253.

(d) 5 Cruise 254. (3d edit.)

(e) 4 Anne, c. 16. s. 16.



titled to recover, the recovery is completely falsified as to that action. Thus it may be shewn that the person against whom the writ is brought had no estate of freehold in the land at the time. And the Court of Chancery can invalidate either a fine or recovery, which appears to have been obtained by fraud or imposition, by compelling the recoveror to convey the estate to the person who is entitled in equity to have it, or by declaring the recoveror to be a trustee for such person. A Court of equity will likewise restrain the operation of a recovery to those purposes for which it was intended, and will not allow it to have a more extensive operation. (g) And where a person has been prevented from suffering a recovery by force and management, the Court of Chancery will compel the parties to act as if the recovery had been suffered. (h)

To prove a fine at common law, it is only necessary to produce the chirograph which is conclusive evidence of the fine, because the chirographer being an officer appointed by law, for the purpose of transcribing fines from the record and delivering them to the parties, his copies must be allowed to be authentic. (i) But the chirographer is not authorized by the statute

Of giving a fine or recovery in evidence.

(g) *Stanhope v. Thacker*,  
Prec. Cha. 435.  
(h) *Luttrell v. Olmias*, 11

Ves. 638.  
(i) *Gilb. Evid.* 24. Bull.  
N. P. 229.

to deliver copies of the proclamations to the parties ; therefore, when the proclamations have to be proved, an office copy of the fine, with the proclamations indorsed on it, must be obtained from the chirographer ; and the person who is to prove the proclamations must himself examine the copy with the record. (*k*) The safest way to do this is to cross-examine the copy, by letting the chirographer's clerk read the record to the witness who is to prove it, whilst he looks at the copy, and then for the clerk to read the copy whilst the witness looks at the record. But it has been held sufficient to prove that the copy agrees with what the officer read as the contents of the record ; (*l*) and it has also been several times decided at *nisi prius*, (*m*) that the accuracy of the copy of a record is sufficiently proved by a witness who looked at the copy while the original was read by another person. Where the proclamations appeared to be duly indorsed

(*k*) When the proclamations have to be proved at the assizes, it is usual, in order to save the expense of a witness on purpose, to get one of the judge's clerks, who goes the circuit, to examine the office copy with the record, and to produce

and prove the copy on the trial.

(*l*) *Rolfe v. Dart*, 2 Taunt. 52.

(*m*) *Per* Lord C. J. Kenyon, Lord C. B. Macdonald, and Mr. Justice Lawrence. See Manning's Digest. tit. Records 92.

on the fine, but no other evidence was offered on the trial to prove that the proclamations had been made, it was held on the argument of the case, (*n*) that the chirographer's indorsement of proclamations on the fine was not alone sufficient evidence of their having been made, the the chirographer's duty being to make out the fine, and nothing else ;—and the proclamations were held not to have been proved. And as either the cognizor or cognizee must have an estate of freehold in the land at the time of levying the fine, (*o*) this must be proved to give effect to it, (*p*) though merely proving the receipt of rent is sufficient ; (*q*) and that, as it seems, even though the rent be received after the fine is levied, if it became due before : but the tenant in possession will not be allowed to prove it, for he would thus be supporting his own possession. (*r*) In an ejectment for lands passed by a fine with proclamations, the confession of lease, entry, and ouster, is not sufficient, as an

(*n*) *Doe d. Hatch v. Black*,  
2 Marsh. Rep. 170.

(*o*) Touchstone, c. 2. Therefore when a fine is pleaded, the plea must aver an actual seisin of the freehold.  
*Story v. Lord Windsor*,  
2 Atk. Rep. case 348.

(*p*) *Doe d. Foster v. Williams*, Cowper's Rep. 621.

(*q*) *Lord Townshend v. Ash et Ux.*, 3 Atk. Rep. Ca. 116.

(*r*) *Doe d. Osborne v. Spencer*, 11 East. Rep. 495.

actual entry (*s*) must be proved (*t*) to have been made on the land ; (*u*) and that, for the express purpose of avoiding the fine, (*v*) either by the party himself, or some one for him by his order, (*w*) or with his assent, (*x*) for either authority before, or assent after, is said to be sufficient. (*y*) To prove a recovery, the exemplification of it must first be produced : (*z*) but as there are many exemplifications of recoveries suffered between the commencement of the reign of Queen Anne and that of King George II., whereof no entries upon the Rolls in the Treasury of the Court of Common Pleas, nor any writ of entry, summons, or seisin, can be found, it is enacted by 14 Geo. II. c. 20. s. 4. that after twenty years' possession by a purchaser for valuable consideration, the deed making the tenant to the præcipe shall be admitted as evidence that the recovery was duly suffered, provided that the person making such deed had a sufficient

- (*s*) Where a tenant for life levies a fine, though it be no bar to the remainderman, yet he must make an actual entry. *Doe d. Compere v. Hicks*, 7 T. R. 433.
- (*t*) *Berington v. Parkhurst*, 4 Brown's Parl. C. 85.
- (*u*) *Anon.* Skinner's Rep. 412.
- (*v*) See Mr. Ford's note of *Dormer v. Parkhurst and Others*, 13 East 489.
- (*w*) *Curteis v. Wolverston*, Cro. Jac. 56.
- (*x*) *Ficket v. Adams*, 2 Stra. 1128.
- (*y*) Touchstone, c. 2.
- (*z*) *Jenkins v. Pritchard*, 2 Wils. 115.

estate for that purpose. In a modern recovery the seisin of the freehold in the person against whom the writ of entry (*a*) is brought must be proved, because that writ does not lie against a person not seised of the freehold : but in an ancient recovery, if nothing to the contrary appear, this seisin will be presumed, and therefore need not be proved, if the possession has ever since gone agreeably to it, and there are any circumstances upon which to raise the presumption : (*b*) but not where any thing to the contrary does appear, (*c*) or there are no facts to raise the presumption upon. (*d*) After, however, a very long possession, a recovery itself has been presumed ; (*e*) and it has been held that upon the production of a recovery, it shall be taken to be a good one until the contrary be proved. (*f*) To shew the uses of the fine or recovery, the deed leading or declaring the uses must be produced, and the execution of it also proved, if made within thirty years : but if the deed be of thirty

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| ( <i>a</i> ) <i>Doe d. Hale v. Wegg and Others</i> , 6. T. R. 708.             | ( <i>d</i> ) <i>Goodtitled. Bridges and Others v. Duke of Chandos</i> , 2 Burr. 1065. |
| ( <i>b</i> ) <i>Warren d. Webb, v. Grenville</i> , 2 Stra. Rep. 1129.          | ( <i>e</i> ) <i>Haselden v. Bradney</i> , . cited 3 T. R. 159.                        |
| ( <i>c</i> ) <i>Keene d. Lord Portsmouth v. Lord Effingham</i> , 2 Stra. 1267. | ( <i>f</i> ) <i>Dame Griffin v. Stanhope</i> , Cro. Jac. 445.                         |

years' standing, no further proof is required than the production of it. (g) Where the deed produced appeared to be without a seal, upon proof how the seal was broken off, the deed was admitted. (h) And upon an issue whether a deed to lead the uses of a fine was duly executed, though it was inrolled only for safe custody, yet, as the deed was lost, a copy of the inrolment was allowed to be given in evidence on the trial. (i) If a deed of bargain and sale be pleaded with a *profert in curia*, the deed itself need not be produced, as an examined copy of the inrolment signed by the proper officer, and delivered in upon oath, will be sufficient. (k) And whenever there may be occasion to find a special verdict, or to state a special case respecting a fine or recovery, as the legal result only is material, no more than the substance of it should be stated. (l)

Of stopping in  
transitu.

When it is apprehended that a fine or recovery is about to be passed, to which the party interested has any objection, and wishes to prevent its completion, he may stop a fine by entering a *caveat* at the king's silver office, and a

(g) Buller's N. P. 255.

case 529.

Phil. Ev. 493. 4th edit.

(k) 10 Anne, c. 18. s. 3.

(h) *Cornwallis v. Horwood*,  
Latch's Rep. 226.

(l) *Goodright d. Fowler v.*  
*Forrester and Another*, 8

(i) *Combs v. Dowell*, 2 Vern.

East Rep. 552.

recovery by entering the *caveat* at the Judge's chambers. At the former 3s. 4d. a term is paid, and at the latter 2s. 6d. The caveat is entered by leaving a written request to stop the fine or recovery when it comes there, and to give the person leaving the request notice thereof, upon receiving which, as the *caveat* is only to give him an opportunity of taking the opinion of the Court on the matter, the person entering it applies in term to the Court by motion, on an affidavit of the circumstances, to stop the fine or recovery from passing through the offices, upon which a rule *nisi* is usually granted; and this is afterwards made absolute or discharged, as the ultimate opinion of the Court may be. (n) In vacation a Judge at Chambers determines the matter after hearing the allegations of both parties on a summons for the purpose; or, as the parties may appeal from his decision to the Court, he makes an order to stay the further proceedings until the second or some other early day in the ensuing Term, that the parties may then obtain the opinion of the Court on the subject. Any person may interfere to prevent a fine passing that may be detrimental to the interests of the revenue. (o) The Court refused

(n) For the *caveat* and rules XLVII.

of Court, or orders, See (o) *Appleyard v. Brown*,  
Appendix XLV., XLVI., 5 Taunt. 265.

to suspend the granting of a fiat of a fine upon an affidavit that the deforçant was between 90 and 100 years old, and imbecile in mind. (*p*) And where the estate of a married woman had been regularly sold with the consent of her husband, the conveyance executed by him, and the purchase money paid, the Court would not interfere to prevent the wife from levying a fine because her husband had since become *non compos*. (*q*)

Of searching for a fine.

The proper place to search for a fine is at the king's silver office, where fines are entered in the office books every Term, alphabetically by the counties. The entry comprises the names of the parties, the parcels as they stand in the writ, the names of the commissioners before whom and the time when the fine was acknowledged, the return of the writ of covenant, the prefine and postfine, and the solicitor's name. The books contain these particulars of all fines levied from the first of Edward the VIth to the present time. A fine may also be searched for at the chirographer's office, where the names, counties, and places, are entered in the office books: but they do not here go further back than the reign of George III. (*r*) The

(*p*) *Price v. Watkins*, 1 Bing. 73.

(*q*) *Stead v. Izard*, 1 N. R. 312.

(*r*) The fines from the reign of Richard the First, to the end of the reign of George the Second, are in the



proper place to search for recoveries is at the *warrant of attorney office*, where they are entered in the office books every Term, alphabetically, by the counties. The entry comprises the name of the county, the parcels as they stand in the writ, the names of the demandant, tenant, and vouchees, and the numbers of the rolls. These particulars the clerk of the warrants collects from the recovery rolls, which he receives from the prothonotary; and then delivers them over to the clerk of the essoigns, who files them in the treasury Chamber of the Court at Westminster Hall. The books in the warrant of attorney office, contain these particulars of all recoveries suffered from the 22d of Henry the VII, (s) to the present time. The entries at the King's silver and warrant of attorney offices up to the year 1733 are in Latin, and from that period in English. The charge for permission to search is four-pence a term; and the clerk at each office will make the search himself for the party applying on being paid the further fee of two-pence per term. At the chirographer's eight-pence a year is paid: but fourpence for a single term.

For a recovery.

Chapter House Westminster regularly arranged according to the year, term, and county; and in

the earlier reigns, the boundaries of the lands are frequently given. (s) 1507.

## CHAPTER VI.

PRACTICAL DIRECTIONS FOR LEVYING AND PASSING  
FINES.

Jurisdic-  
tion of the  
Court of  
Common  
Pleas.

THE Court of Common Pleas has exclusive jurisdiction in fines and recoveries of freehold lands and hereditaments, except as to such as lie in any of the counties palatine, the principality of Wales, the isle of Ely, or in corporate towns, whose Courts have power to hold pleas of land ;—so that with these exceptions, and unless the record be removed by writ of error into the Court of King's Bench, all fines are levied and recoveries suffered in the Court of Common Pleas.

Præcipe  
and con-  
cord.

The first thing to be done in order to levy a fine is to prepare the *præcipe* and *concord*. The *præcipe* contains the name of the county where the lands and hereditaments lie, the names of the parties, the quantities (sufficiently ample to include all) and the description of the property to be passed by the fine ; together with the name of the parish, or other local

division in which the property is situate. (a) The form of the *præcipe* is the same in all fines. The *concord* contains the agreement of the parties ; and as it designates the nature of the fine, it of course varies according to the intention of the parties, and the estate that is to be passed or limited by it. The fine however most frequently used is that *sur cognizance de droit come ceo, &c.* (b)

The *præcipe* and *concord* must be written or ingrossed in a fair legible hand, upon parchment, in words at length ; and the utmost care should be taken that there be no erasure or interlineation ; (c) if any do occur, it must be carefully noticed in the affidavit of caption, (d) when the fine is acknowledged before Commissioners, (e) under a *dedimus potestatem* ; and even then considerable difficulty may be expe-

(a) See App. XIV. XVII.

If there be any difficulty in arranging the parcels in the *præcipe*, it will be found best to settle them with the cursitor, as the description in all the subsequent proceedings should correspond with that in the *præcipe*.

(b) See *ante*, p. 5, 9. 11.

(c) In a case where the christian name of one of

the parties to a fine was written on an erasure in an acknowledgment taken abroad, the Court would not permit it to pass. *Tippet v. Douglas*, 2 Moore 375. 8 Taunt. 334.

(d) See Rule, Hil. T. 26 & 27 Geo. 2. and Append. M.

(e) See the form in which this is noticed, Append. XX.

rienced in passing the fine through its subsequent stages. (*f*)

Acknowledgment  
of fines.

The next step to be taken is to get the fine acknowledged by the cognizors. Of doing this there are four modes; *first*, in open Court, which is termed acknowledging *at bar*; *secondly*, before the Lord Chief Justice of the Court of Common Pleas, who possesses this peculiar authority *virtute officii*, from ancient custom and usage; (*g*) though, if he be a party to the fine, he cannot take the acknowledgment, *quia judex in propria causa*, which rule includes of course all other Judges and Commissioners;—*thirdly*, before Commissioners appointed for the purpose under a writ of *dedimus potestatem*, issuing out of the Court of Chancery;—*fourthly*, before any of the Judges, Barons, or Serjeants at law. In this case however a general *dedimus* must be sued out before or after the acknowledgment of the fine.

At bar.

If the parties elect to acknowledge the fine *at bar*, or in other words in open Court, a copy of the *præcipe* must be made, and left with the cursitor of the county in which the lands lie,

(*f*) For the form of the *præcipe*, see Append. XIV. XVII.; and for the concords of the several kinds of fine, see Append. LXVIII. to LXXXV.

The concord is written immediately under the *præcipe* in a narrower margin. See App. XVII. (*g*) 2 Inst. 512.

who will thereupon prepare the *writ of covenant*. When this is obtained, it must be annexed to the *præcipe* and *concord*, and taken to Westminster, where the cognizors must attend whilst the Court is sitting. Any of the Serjeants, on being applied to, will take the acknowledgment of the parties; and when he has done this, he will hand the writ of covenant to the secondary, calling out at the same time "*king's silver*,"—and return the *præcipe* and *concord* to the parties. (h) If any of them be a married woman, the Serjeant's clerk will conduct her to the puisne Judge's clerk, who will introduce her to the Judge sitting on the bench, and deliver to him the *præcipe* and *concord*, when his lordship will examine her apart from her husband to ascertain that she voluntarily consents to the fine, and is aware of its intended operation. The Judge will then deliver the *præcipe* and *concord* to one of the prothonotaries, who will mark the *præcipe* as counted at bar, and enter it in his books. The *præcipe* and *concord* with the *writ of covenant* must then be procured from the prothonotary, and passed through the other offices as hereafter described, commencing at the *alienation office*.

(h) Care should be taken that the secondary marks the appearance of all par-

ties. See *King v. Steddel*, ante, p. 78.

Before the  
Lord Chief  
Justice of  
the Court  
of Common  
Pleas.

When the cognizors reside in or near London, it is most advisable for them to acknowledge the fine, either in the mode already described ; or, (as that can only be done in term time)—in the second mode before mentioned, namely, before the Lord Chief Justice of the Court of Common Pleas ; because either of these will save the expense of a *dedimus potestatem*, which in all other cases is indispensable. When the fine is to be acknowledged before the Chief Justice, a paper copy of the *præcipe* and *concord* must be made and signed, as well as the one on parchment, by the cognizors. This being done, and the caption written under each copy, the cognizors must be conducted before the Chief Justice either at his house, or at the Treasury Chambers just before he goes into Court, if it be in Term time, or at the sittings, assizes, or his residence, if in the vacation. The *præcipe* and *concord* with the *paper copy* must be handed to the clerk in attendance, who will deliver them to the Lord Chief Justice ; and he will then examine the parties as to their competency and knowledge of the intent of the fine. And in all cases where a married woman is a party, he will examine her separately as to her voluntary consent, and knowledge of the intent of the fine, and then sign the caption on the parchment copy, which he will return to the parties, and his clerk will retain the paper copy. A writ

of covenant must then be obtained, and the fine passed through the subsequent stages beginning at the *alienation office* as pointed out hereafter.

If the cognizors reside in the country, (i) or if any of them be sick and infirm, it is the general practice to take their acknowledgments before Commissioners, appointed for that purpose, under a writ of *dedimus potestatem*, (k) issuing out of the Court of Chancery. This practice is founded upon the statute of Carlisle, 15 Edw. II.; and when it is adopted, a copy of the *præcipe*, containing the names of the Commissioners to whom the writ is to be directed, must be left with the cursitor of the county in which the property is situate. The Commissioners must be either barristers of five years' standing, or solicitors or attorneys of some of the Courts of Westminster Hall, unless the cognizors reside in Scotland, or in parts beyond the seas. (l) It is usual to name four Commissioners or more, to prevent the inconvenience which might arise

Before commissioners under a *dedimus potestatem*.

(i) It is irregular to acknowledge a fine in London before any other than a judge or serjeant. *Nokes v. Styles*, 3 Taunt. 49. and it is said that the Judges have recently refused to pass fines acknowledged before Com-

missioners, unless it appeared that the parties lived more than 20 miles from London.

(k) For the form of this writ, see Append. XV.

(l) See Rple Mich. T. Geo. 3. Append. Q.

from any of them being unable to attend to take the acknowledgment; and when there are many cognizors living remote from each other, it would be prudent to name three or four Commissioners at each place. To the names mentioned in the *præcipe*, the cursitor prefixes that of a knight in the *dedimus*, which however is only matter of form. The *dedimus* being obtained, and the *præcipe* and *concord* fairly written out on parchment as before directed, any two of the Commissioners may proceed to take the acknowledgment in the following manner. The cognizors being out of prison, (*m*) and the Commissioners being satisfied that the persons about to make the acknowledgments are the parties named as deforceants in the writ and concord, and also that they are of full age and competent understanding, must read the concord over to, and fully acquaint them with, the nature and intended effect of the fine, upon which the cognizors must acknowledge their consent thereto, (*n*) and write their names or sign their marks at the foot of the concord; and if any of them be a married woman, the Commissioners must examine her separately, and

(*m*) 18 Edw. 1. stat. 4.

(*n*) To levy a fine in the name of another is a ca-

pital offence, 21 Jac. 1.;

and after conviction the Court will vacate it.



apart from her husband, to see that she freely and voluntarily consents to the fine. (o) The Commissioners then sign their names to the caption which must be dated the day and year it is taken : (p) they must also indorse their *return* (q) upon the *dedimus*, and sign their names thereto, and then annex the *præcipe* and *concord* to the *dedimus*. (r) After this is done, one of the Commissioners, or some other person who is an attorney of one of the

(o) The examination of a *feme covert* ought to be secret, the object thereof being to ascertain that she is content to levy the fine of the particular lands comprised in it, (naming them distinctly, and also the estate and interest which is intended to be passed by the fine,) and that she does it of her free will, and without threats, or any other compulsory means. Co. Litt. b. iii. c. 12. s. 669. and see Rule Hil. T. 17 Geo. 2. see Appendix L.

(p) Rule Hil. T. 26 & 27 Geo. 2. see Append. M. But in one case where the

day and year on which the acknowledgment was taken, were left blank, the Court allowed them to be supplied by affidavit. *Lane v. Bennett*, 4 Taunt. 589.

(q) See Append. XVIII.

(r) This must be before the return of the writ of covenant, and after the teste of the *dedimus potestatem*; and when there are more cognizors than one, though it is not necessary to take all the acknowledgments at the same time, they must all be upon *one* piece of parchment, and not on *separate* pieces. *Batch v. Phelps*, 3 Bos. and P. 366.

Courts at Westminster, and who knows the cognizors, and was present when the fine was acknowledged, must make an affidavit of the due acknowledgment thereof, (s) pursuant to the rules of Court. (t) This affidavit must be written upon parchment, and sworn before a Commissioner for taking affidavits in the Court of Common Pleas: but none of the Commissioners named in the *dedimus*, nor the attorney for any of the parties to the fine, is competent to administer this oath. The affidavit must then be annexed to the other documents, and this will complete the commission.

In Scot-  
land.

There is no rule of Court expressly directing the mode in which fines are to be acknowledged by persons residing in Scotland, or parts beyond the seas: but the Court has held (u) that the rules relating to recoveries suffered by persons abroad may be extended to fines. Where the cognizors therefore reside in Scotland, the *dedimus* can only be directed to the Judges of the Courts of Session and Exchequer, or advocates and clerks to the signet of five years' standing, (v) who take the acknowledgment of the parties in

(s) See Append. XIX., XX.,  
XXI.

L. M.

(t) Rule Hil. T. 17 Geo.

(u) *Cruttenden v. Bourbell*,

1 Taunt. 144.

2. and Hil. T. 26 & 27

Geo. 2. See Append.

(v) But the Court upon motion permitted a fine to be

the manner already described; and the affidavit of the due caption must be made by one of the clerks to the signet, and sworn before one of the Judges or some other person duly authorized to take affidavits or depositions in the Court of Session or Exchequer. (*w*)

If any of the cognizors reside in Ireland, or other parts beyond the seas, the names of two or more persons living near them (*x*) may be inserted as Commissioners in the copy of the *præcipe* left with the cursitor, on bespeaking the *dedimus*. (*y*) When it is obtained, it should be sent with the *præcipe* and *concord* to those Commissioners for them to take the ac-

In Ireland  
and parts  
beyond  
the seas.

acknowledged in Scotland before persons who were not writers to the signet, there being none resident within 100 miles of the parties, and they being in fact unable to travel. *Matthew and wife*, 7 Taunt. 696.

(*w*) See Rules, Hil. T. 14 Geo. 3. and Mich. 39 Geo. 3. Append. N. Q.

(*x*) If the parties live remote from each other, two or more writs may be had: but the reason should be

assigned in one of the affidavits of caption.

(*y*) The rules of Court are silent with respect to the qualification of these Commissioners: but of course persons of the utmost respectability in the place should be selected; and in order to satisfy the Court that this has been done, it is indispensable that the *rank*, *quality*, and *station*, of such Commissioners be described in the affidavit of caption.

knowledge of the parties residing abroad, which must be done in the same manner and form in all respects as has already been pointed out concerning fines acknowledged at home. The Commissioners must sign the caption, and indorse and sign a return of the *dedimus* as to the acknowledgments taken by them; and one of them must make an affidavit of the due acknowledgment of the fine, which must be sworn either before some person duly authorized to take affidavits in the Court of Common Pleas, or before some magistrate of the place where such acknowledgment shall be taken, having authority to administer an oath, and in the presence of a notary public who must make a certificate, (z) that the affidavit was duly sworn (a) in his presence, and that the magistrate before whom it was sworn usually administers oaths, and verifying the name, signature, and office of the magistrate. This certificate (b) must be made in writing under the *hand and*

- (z) But if a foreign notary make this rule an occasion of extorting from the cognizor a large per centage upon the value of the lands, &c. concerned, the Court upon an affidavit of the circumstances will dispense with the notarial certificate. *Ruding v. Manning*, 2 Taunt. 313.
- (a) *Laidlaw d. Cox t. Brown v.* 2 Taunt. 205.
- (b) See the form Appendix XXVI.

*seat* (c) of the notary, either on the back of the præcipe and concord, or on a *separate piece of parchment* (d) annexed thereto, and free from any erasure or interlineation. If the notary be not present when the affidavit of caption is sworn, he must annex to his certificate an affidavit, that he shewed the affidavit of the Commissioner to the magistrate before whom it appeared to have been sworn, and that the magistrate acknowledged it to have been sworn before him by the deponent therein named on the day mentioned in the jurat. This affidavit must be sworn before some other magistrate, and the notary must mention in his certificate that the person before whom the Commissioner's affidavit appears to have been sworn is the magistrate he

(c) *Cruttenden v. Bourbell*, see *ante* p. 122.

(d) All the documents must be on parchment. *Palmer v. Morgan*, 4 Moore, 162. *Randall v. Lowring*, 6 Moore, 232. 1 Brod. and Bing. 472. And if in a fine acknowledged abroad, a schedule be referred to on the back of the *deimus* as being annexed, such schedule must be

signed by the Commissioners. *Ibid.* 295. If the caption of a fine abroad be stated to have been taken by A. and B., and the affidavit states that it was taken before A. and C., the Court will not permit such fine to pass. *Maidment v. Proctor*, 6 Moore, 517. And see *Tippett v. Douglas*, *ante* 115.

states himself to be ; that the persons before whom the notary and the Commissioner made their affidavits are magistrates duly authorized to administer oaths ; and that the names of the magistrates subscribed to the several affidavits are of their respective proper hand-writing. If there be not any notary at the place, then there must be an affidavit of that fact, and verifying the handwriting of the magistrate. If the acknowledgment be taken before a great judicial officer, as the Lord Chief Justice of the Court of Common Pleas in Ireland, the attestation of the notary will be dispensed with ; (e) as it will also if the affidavit of caption be sworn before the Lord Chief Justice of the Court of King's Bench, or any of the judges there, upon an affidavit verifying the handwriting of such judge. And where a fine had been acknowledged in France; the magistrate who had authority to administer oaths there, having improperly declined to do so, in consequence of which the affidavit was sworn before two English magistrates, who happened to be there at the time, the Court allowed it to pass. (f)

Before any  
of the  
Judges,  
Barons, or  
Sergeants.

If the acknowledgment is to be taken by any of the other Judges, or any of the Barons of the

(e) *Ex parte Worsley*, 2 H. Black. 275. (f) *Lovibond v. Morshead*, 2 New Rep. 57.

Exchequer, or by any of the Serjeants at law, it must be done in the same manner as before the Chief Justice: but a general *dedimus* must be obtained from the cursitor to warrant the caption, though no *allocatur* is necessary.

When the fine has been acknowledged before the Chief Justice, or before Commissioners, under a *dedimus potestatem*, or any of the Judges, Barons, or Serjeants, the next thing to be done, in order to pass it through the offices, is to apply at the cursitor's for the *writ of covenant*; (g) to obtain which the *præcipe* and *concord*, (h) and also the *dedimus* (when the acknowledgment has been taken in either of the two latter modes) must be left with the cursitor, upon which he will make out the *writ of covenant*. This writ is supposed to be sued out before the *dedimus*, and care must be taken that it is tested before the *dedimus*; which, however, the cursitor always attends to. The return of the writ of covenant depends upon the time when the cursitor receives his instructions for

(g) It will have been seen above that when the fine is acknowledged at bar, the writ of covenant was applied for in the first instance.

been acknowledged before the chief justice, or any of the Judges, Barons, or Serjeants, a paper copy of the *præcipe* must be left with the cursitor.

(h) And when the fine has

it. If it be bespoke in term, he makes it returnable the first return of the term; if in the vacation, and before the essoign day of the ensuing term, he makes it returnable the last return of the preceding term: but if the writ be not bespoke until after the essoign day, then it is made returnable the first return of the term. Therefore if the writ of covenant be not bespoke before the essoign day of the next term after the acknowledgments are taken, and the parties wish it to be a fine of the preceding term, an order of the Court of Chancery must be obtained to authorize the cursitor to make the writ returnable in such term: without such an order he cannot make out an original writ of a return past, unless he first receive the instructions before the essoign day of the following term. (*i*) To obtain this order a *petition*, stating the reason why the writ was not bespoke in time, and praying that the cursitor may make one out returnable in the preceding term,—should be presented to the Lord Chancellor or the Master of the Rolls, accompanied by an affidavit that the deforciant is living; (*k*) whereupon an order will be made accordingly, and on producing this order to the cursitor, he will make out the writ

(*i*) Lord Chancellor Clarendon's order, 22 May, 1661.

(*k*) See the forms in the Appendix XXX., XXXII., XXXIII.



returnable as desired. When the cursitor makes out the writ of covenant, he also makes out a new *dedimus*, if the acknowledgments were not taken within a year, which he annexes to the former one, to warrant the captions; for though the acknowledgments may be taken afterwards, he does not consider the *dedimus* to stand good longer than a year.

After the writ of covenant has been obtained from the cursitor, the next step to be taken, *when the fine has been acknowledged before commissioners under a dedimus*, is to leave the writ of covenant, *dedimus*, and præcipe and concord, (k) at the chambers of one of the judges of the Court of Common Pleas for his *allocatur* of the caption, or fiat to let the fine pass: but this is only necessary when the acknowledgment was taken before commissioners. (l) Care should be taken that the writ of covenant is obtained before the *allocatur* is applied for, as it

Judge's *allocatur* when the fine is acknowledged before commissioners.

(k) These documents should be pinned together with the writ of covenant uppermost, upon the stamp of which, the name of the solicitor should be written, before it is left at the judge's chambers, that it may be more readily found when called for. The form

of the *allocatur* may also be written at the foot of the concord under the names of the cognizors; for which see Append. XXII., XXVII.

(l) Orders, Hil. 17. and Trin. 26 and 27 Geo. 2. Append. L. M.

cannot be granted without it; (*m*) neither will the *allocatur* be granted, if the affidavit of caption be not in all respects correct: but if, after it is left at the judge's chambers, any material defect should be found in it, the affidavit may either be amended and resworn; or an auxiliary affidavit may be made by the original, or any other deponent to supply the defects. When the affidavit is correct or any defect remedied, and all the necessary forms have been attended to, the judge's clerk will write the *allocatur* at the foot or on the back of the concord, and get it signed by the judge, usually in the course of a day or two.

Alienation  
office.

When the writ of covenant has been obtained, and the fine acknowledged and allowed, the writ of covenant must be taken to the *alienation office*, to have the fines due to the crown compounded or assessed by the commissioners there. The nature and relative amount of these fines have been already mentioned. (*n*) If the writ be taken to the office while the commissioners are sitting, (*o*) they will set the fines immediately, which must then be paid to the receiver together with the office fees. If after payment of the

(*m*) Order, Trin. T. 30 Geo.

3. See Append. O.

(*n*) See p. 3, 4. *ante*.

(*o*) They sit from eleven till  
twelve except on holidays:

but, after the last seal in  
the long vacation, they  
only sit on Tuesdays and  
Wednesdays.

postfine, the writ of covenant by the death of any of the parties, or otherwise, be prevented from proceeding through the subsequent stages, the receiver is to repay the cognizee, his attorney, or agent, (on producing and filing the writ of covenant with him) the money received for the postfine. (p) The commissioners have three modes of setting the fine; namely, by the rent, by the purchase money, and by the quantity of acres. If the rack rent (which is the full value of the premises or near it) (q) or the purchase money is small, especially when the premises are houses in London or Middlesex, or in any county, city, or town, or there are a considerable number of parcels in the writ, or part of the premises are unproductive, it may perhaps be prudent to prove to the commissioners the amount of the rent or purchase money, or that such and such parts only are situate in such a city or town; or that another part is unproductive, in order that they may not set the pre-fine too high. But if the parcels be few, and the rent or value high, to prove the rent, value, or purchase money, may, instead of lessening, increase the fine; because it is the practice of the commissioners to set the fine by the quan-

(p) 32 Geo. 2. c. 14. s. 5. (q) 2 Black. Com. c. 3.

See Append. V.

tity when they have no proof; and when proof is tendered, they regulate the fine by such proof. Therefore, before any such proof is offered to the commissioners, these circumstances, with the commissioner's rules and tables of rates for setting the prefine, (*r*) should be well considered. If it be worth while to prove the rent, value, purchase money, or other circumstances of the case, in order to reduce the amount of the fines, some person who can speak to the facts should attend before the commissioners to depose thereto; and if personal attendance be inconvenient, an affidavit of the facts must be made and lodged at the office, whereupon the commissioners will set the fine accordingly. In addition to what has already been observed with respect to the effect of the cognizor's death, before the return of the writ of covenant, (*s*) it may be proper to add here, that although, until the fine be marked with the amount of the postfine, it is not deemed effectual in law; (*t*) yet if the cognizor be living at the return of the writ of covenant, even if he die before the postfine is paid, especially if it be paid previous to any application against the fine, (*u*) it will be

Of the cognizor's death before the completion of the fine.

(*r*) See Append. XXXVII.,

XXXVIII, XXXIX.

(*s*) See p. 4. and 100, *ante*.

(*t*) 32 Geo. 2. c. 14. App. V.

(*u*) *Barber v. Nunn and Others*, Barnes's notes 218

good; and may be completed, inasmuch as the concord or agreement is supposed to be made at the return of the writ of covenant, (v) when the king's silver or postfine becomes due to the crown, (w) and is supposed to be paid. And when the postfine is paid, the receiver at the *alienation office*, and the clerk at the *king's silver*, both enter it on the back of the writ of covenant, and so it appears to have been paid before the cognizor's death. And though the Court will not, after the fine is ingrossed, alter the term, as to make it Trinity instead Michaelmas; (x) yet, if the fine be acknowledged before commissioners in the vacation, and the cognizor die previous to the term, notwithstanding the writ of covenant be not sued out, the Court will permit the cognizee to enter the fine, as of the preceding term; (y) and when once the fine is recorded, it must be taken to be a fine of that term, and no averment of its having been acknowledged after will be received. (z)

Having got the writ of covenant compounded and paid the fines, and office fees, it must then be taken to the return office, where the clerk

Return of-  
fice.

- |  |  |
|--|--|
| (v) <i>Watts v. Birkett and Wife</i> , Barnes's notes 220. | (y) <i>Odes v. Woodward</i> , 2 Ld. Raym. 849.                                 |
| (w) <i>Barber v. Nunn</i> .                                | (z) <i>Lord Say and Seal and Others v. Lloyd and Others</i> , 4 Bro. P. C. 73. |
| (x) <i>Heath v. Wilmot</i> , 2 W. Black. 788.              |  |

will indorse on the writ the sheriff's return. It contains the nominal pledges of prosecution, and summoners of the deforciant. (a) The cursoritor then marks the writ with the seal of his office; and enters in his book the names of the county, of the parties, of the parishes, or other local division, in which the lands lie, and of the attorney.

Warrant of  
attorney  
office.

When the writ of covenant has been returned, the plaintiff's warrant of attorney (b) must be drawn and copied upon parchment, which with the writ must then be taken to the *warrant of attorney office*, and delivered to the clerk, who will file the warrant of attorney and return the writ, after marking it with the seal of his office. And no officer of the Court is to receive or file the writ of covenant, or make any entry of the fine, until it has been so signed by the clerk of the warrants. (c) The king's silver rolls are delivered into this office, from which the clerk extracts the names of the parties, the premises, and the amount of the king's fine; and afterwards hands the rolls to the clerk of the treasury, who files them among the records of the Court in the treasury chamber at Westminster Hall.

*Custos bre-  
vium of-  
fice.*

After the writ of covenant has been passed by

(a) See Append. XXXVI. pend. XLIII.

(b) For the form, see Ap- (c) Order, Hil. T. 14 Jac. I.

the clerk of the warrants, all the fine documents, namely, the writs of covenant and *dedimus*, the concord, and the affidavit of acknowledgment, must be left with the *custos brevium*, who then, within the two clear days which he is allowed to keep the fine, enters it in his book, indorses the proclamation upon the back of the concord, and marks both it and the writ of covenant with the seal of his office ; so that the whole may be obtained back again immediately upon the opening of the office on the fourth day, including the day on which the fine was left, but excluding a Sunday or other holiday. (d) To this office are brought and filed by the *chirographer* the *foot* and all the other parts of the fine, except the writ of covenant which is kept in the *chirographer's* office. (e)

When the fine has been obtained from the *custos brevium office*, it must be taken to the *king's silver office*, to have the king's silver, (which is now paid at the alienation office,) entered. The clerk enters the fine on the roll, (f)

(d) See the observations on the subject of expedition, *infra*.

(e) The concord of a fine having been lost before it passed the *custos brevium* office, the Court suffered

a new concord and acknowledgment to be prepared, and the fine to be perfected. *Wright v. Wright*, 4 Taunt. 193.

(f) See the entry on the roll, Appendix LIV.

and also in the office books. (g) He also enters the postfine on the back of the writ of covenant; (h) for he has to enter the fine of record, make the same entries, and indorse it in the same way, as he was accustomed to do, before the fines were paid at the alienation office. (i) When the clerk has made these entries, he examines them himself; marks the writ of covenant, *dedimus*, and concord, with the seal of his office; and then the fine is ready to be taken away. The clerk delivers the rolls over to the clerk of the warrants on the first day of the succeeding term. If the fine be not brought to this office to be passed within a year after the acknowledgments are taken, an affidavit must be made that the cognizors are all living at the time of the application to pass it; (k) upon reading which the Court will generally make a rule, or a judge an order, for the fine to pass through the offices, notwithstanding the delay. And if any of the cognizors should not then be living,

Where not  
passed  
within a  
year.

(g) For the particulars of the entries in the books, see p. 112, *ante*.

(h) For these entries, see Appendix XXXVI.

(i) 32 Geo. II. c. 14. App. V.

(k) See rule Easter T. 36 Geo. 3. Appendix P.

According to the present practice it is sufficient, if they appear to have been living within ten days of the application. See the affidavit Append. XLIX., L. LI.



an affidavit must be made, stating the time of the death of such cognizor or cognizors, whereupon the Court will make a rule or a judge an order (l) for it to pass the offices as to the survivors or survivor. Upon the production of this order to the clerk at the *king's silver office*, he will pass the fine, and file the rule or order: but the rule or order along with the proceedings should be taken to him immediately after the former has been obtained, otherwise he is not bound to pass the fine; and if there has been much more than a twelvemonths' delay, some reason may be required to be assigned for it in the affidavit. (m) Where the documents for passing a fine had been mislaid in the cursitor's office, the Court allowed it to pass, although one of the cognizors was dead, and the acknowledgment was taken more than twelve months before the application was made, upon an affidavit stating the time of the death of the cognizor. (n) But in a case where the proper documents for levying a fine had been perfected two years ago, but it was not completed through the negligence

(l) For the orders, see Appendix LII., LIII.

any special reason assigned. *Noakes v. Shipman*, 8

(m) See the note on p. 95.

Taunt. 75.

*ante*. But a fine more than a twelvemonth old was allowed to pass without

(n) *Fitchley and Wife v. Jervis*, 6 Moore 315.

of the attorney by whom it was to be perfected, and the name of one of the Commissioners before whom it was acknowledged was obliterated, the Court would not allow the fine to pass, but left the parties to levy another. (o) If the clerk of an attorney employed to levy a fine abscond, whereby the papers are mislaid, the Court will permit such fine to be perfected, although the time allowed by the rule (p) be exceeded. And the Court permitted a fine to pass which ought to have been perfected six years since, on an affidavit which stated, that the delay was owing to the negligence of the attorney in London, with whom the necessary documents for its completion had been deposited: (q) but the Court stated that by allowing it now to pass, they wished it to be understood that it could not be done in future at any distance of time. A fine, the date of which was not sworn to, but which had been rejected by the officers as out of time, was suffered to pass on an affidavit that after the due taking of the acknowledgments, the papers had been laid aside and forgotten, in the office of the attorney of one of the deforciant, and

- (o) *Fawcett and Wife v. Slingsby*, 7 Moore 338. See also *Linde v. —*, 5 Taunt. 305.  
 (p) Rule Easter T. 36. Geo. 3. Appendix P. *Moule v. Eyles*, 1 Moore 125. (q) *Howard v. Leath*, 2 Moore 174.

that all the parties were alive. (r) But a fine four years old was not suffered to pass, all the parties being alive, and there being no affidavit stating that the papers were mislaid, or assigning any other reason for the delay. (s)

Within fourteen days after the fine has passed the king's silver office, (otherwise it will be deemed a contempt of Court,) (t) all the proceedings must be taken to the *chirographer's office*, where the fine will be completed by the chirographer making the proclamations, and engrossing the *indentures*, or *chirograph*, which is done upon the same piece of parchment, and then separated by an indented line being cut across the space in the middle where the word *chirographum* is written. The chirographer then examines the indentures, and delivers them out

Chirographer's office.

(r) *Ladbetter v. Barton and Others*, 8 Taunt. 438.

(s) *Inglis v. Heald*, 8 Taunt. 442.

(t) Order Trin. Term 52 Geo. 3. Appendix R. One gentleman, who had passed many fines through the king's silver office, was negligent enough not to bring them into the *chirographer's office*, as directed by this order. Upon

an application to the Court by the chirographer, an attachment was granted against him, and he was ordered to pay the costs of the application; in consequence whereof he brought nearly fifty fines to the chirographer's, and paid almost a hundred pounds for them, and the *post terminum* fees. *Gruggen v. White*, 4 Taunt. 881.

for the parties concerned ; (u) and thus the fine is perfected as to the solicitor. (v) But the chirographer has to complete the proclamations ; (w) and every term he writes out on several parchment rolls a table of the fines, which he hangs up on one side of the Court, pursuant to the act of Parliament. (x) He also writes out on parchment the note of the fine, and the foot ; (y) upon the latter he indorses the proclamations, and then delivers it over to the *custos brevium*. He likewise ingrosses the proclamations upon a separate piece of parchment, which he keeps in his office with the note ; from this the office copy of the proclamations is made when they have to be proved. (z)

If the fine should be wanted before it can be passed through the offices in the regular course, by paying an *expedition* fee, (a) the writ may be had away from the *alienation office* in the afternoon of the day when the fines are com-

- |  |  |
|--|--|
| (u) One for the cognizor, the other for the cognizee.  | soon as they are ingrossed.                                    |
| Terms of the law, tit. <i>Chirographer</i> .   | (w) See p. 8 <i>ante</i> .                                     |
| (v) To avoid all future responsibility, it will be prudent for the solicitor not to neglect getting the indentures, and delivering them over to the parties as | (x) 23 Eliz. c. 3. See the Appendix T. and LXI.                |
|  | (y) See <i>ante</i> , p. 6. See the forms, Appendix, LIX., LX. |
|  | (z) See p. 106, <i>ante</i> .                                  |
|  | (a) Sixpence at each office                                    |

pounded and paid ; but otherwise it is kept there two clear days after the fines and office fees are paid ; so that if they be paid on the Monday, the fine cannot be had away until the Thursday following ; and if a Sunday or holiday intervene, then not until the day after. At the *Return*, *Custos brevium*, and *king's silver offices*, by paying the expedition, the fine may be had away immediately ; otherwise it is kept at the *Return office* one, and at the *Custos brevium* and *king's silver offices* two clear days, as above : but, by paying the expedition, it may be passed from the *alienation office*, to the *king's silver's* in one day. It should however be remembered that though, by paying the expedition at the *king's silver office*, the fine may be commonly had away immediately ; yet on some occasions, as just before the essoign days, so many come into this office at once that it is impossible for the clerk to deliver them out instantly. So, by paying expedition at the *chirographer's*, (b) the indentures may be had in a few days : but otherwise a month may elapse before they are ready. In the term following that, in which the writ of covenant is returnable, *post terminum fees* (c)

(b) According to the length of the præcipe, concord, &c. usually 2s. 6d.

(c) At the alienation office

6d. a term ; return office  
1s. a year ; warrant of attorney office 4d ; *custos brevium's* 1s. 8d ; king's

*Post terminus.*

are payable at the several offices, on passing the fine through them ; therefore, where the fine is to be completed towards the end of a vacation, the *post terminus* may be avoided by paying the expedition, and so getting the fine through all the offices previous to the commencement of the term, which it might not perhaps be otherwise possible to do ; particularly in the short interval between Easter and Trinity Terms. But it should be recollected that the *post terminus* are payable at the *king's silver office* on the *essoign day*, as he is to have his rolls complete and ready to deliver over to the clerk of the warrants by the first day of the term.

silver's 3s. 10d. ; exclusive of 1s. for a post roll for the last term, and 4s. for any

former one ; chirographer's 1s. 8d.

## CHAPTER VII.

PRACTICAL DIRECTIONS FOR SUFFERING COMMON  
RECOVERIES.

It has already been stated that the parties to a recovery are the *demandant*, the *tenant*, and the *vouchees*; and though neither the demandant nor the common vouchee ever actually appear, yet the other vouchees and also the tenant must appear either in person, or by attorney. It is now the usual practice for the person intending to suffer a recovery to make his solicitor, or his solicitor's town agent, tenant to the writ of entry, in order that he may appear in person, and thus save the expense of a *dedimus potestatem* to take his acknowledgment; so that the tenant seldom or never appears by attorney, but always in person. But with respect to the vouchee, it frequently and indeed generally happens, that he cannot conveniently attend the Court, being resident perhaps a considerable distance from *Westminster Hall*. It shall there-

Of suffering a recovery with double voucher, the tenant in person and vouchee by attorney.

fore be shewn how recoveries are suffered in the most usual manner, that is, with double voucher, the tenant appearing in person, and the first vouchee by attorney on a warrant acknowledged before commissioners; (a) after which some of the less frequent modes of suffering recoveries shall be described.

**Præcipe.**

And it may be premised that in whatever mode a recovery is to be suffered, the first thing to be done is to prepare the *præcipe*, (b) which contains the names of the parties, the description and quantities (sufficiently ample to include the whole) of the property intended to be passed, and also the names of the county or city, and of the town, vill, or other locality in which the property lies. (c) When the recovery is to be suffered in the mode now describing, a copy of the

(a) It was formerly the practice occasionally for the tenant or vouchee to acknowledge the warrants before a Judge: but it has now, become obsolete, as the Judge requires the parties either to attend personally in Court, or to acknowledge the warrants before Commissioners under a *dedimus potestatem*.

(b) For the form, see Ap-

pendix, LXXXVII. As to arranging the description of the parcels, see *ante*, p. 115 note a.

(c) Lands in different counties cannot be comprised in the same recovery: in this respect fines and recoveries differ; for one fine may comprize lands in several counties; but there must be a separate recovery for every county.



*præcipe* must be made upon plain paper, at the foot of which, must be added the names of the Commissioners (who must be attornies of one of the Courts at Westminster Hall,) (*d*) and left with the cursitor, who will make out the *dedimus potestatem de attornato faciendo*, (*e*) and get it sealed. Then the *præcipe* and warrant of attorney for the signature of the vouchees must be ingrossed upon a piece of unstamped *parchment*, and a *duplicate* must also be made upon *parchment*. The same care is requisite to avoid any erasure or interlineation in the *præcipe* and *warrant of attorney*, for suffering a recovery, that is necessary with respect to the *præcipe* and *concord* of a fine; (*f*) and if any interlineation or erasure should occur, it must be noticed in the same manner in the affidavit of caption. The *dedimus* with the *præcipe* and *warrant of attorney*, and the *duplicate* thereof, must be forwarded to the Commissioners, two of whom must either be attended by or attend upon the vouchees; and after they have satis-

(*d*) But not the attorney upon the record, *Shaw* d. *Ware* t. *Clulow* v. 4 Taunt. 590; nor the demandant, *Rawle* d. *Pyke* t. 5 Taunt. 747. See Rules, Hil. T. 14. Geo. 3. and Mich. T. 39 Geo. 3. (Appendix N. and

Q.) by the latter of which attornies of Great Sessions in Wales and of counties palatine are rendered *incompetent*.

(*e*) For the form, see App. LXXXVIII.

(*f*) See *ante*, p. 115.

fied themselves of the identity of the parties, and that they are of full age and competent understanding, and read over to and made them fully acquainted with the nature and object of the warrant of attorney, and also examined the *femes covert*, (if any) separately, in the same manner as upon the acknowledgment of a fine, (g) under a *dedimus pōtestatem*, the vouches must sign their names (h) to one part of the warrant of attorney in the presence of the Commissioners who must insert the exact date in, and subscribe their names to the caption at the foot thereof. They must then indorse their return upon the *dedimus*, (i) and annex the *warrant of attorney* thereto, and also the *duplicate*, after one of them has filled it up with the names of the parties, and the dates, so as to make it a copy of the original. An affidavit of the due acknowledgment of the warrant of attorney must then be made upon parchment by one of the Commissioners, or by some other person, being an attorney of one of the Courts at Westminster Hall, who knows the parties,

(g) See *ante*, p. 120, 121.

(h) In a case where the *dedimus* described the vouches as a commoner, and the acknowledgment was signed as if by a peer,

the Court refused to allow the tenant's appearance to be recorded. *Tatton d. Grey v. 2 Bing. 313.*

(i) See Appendix XCI.

and was present when the warrant was acknowledged. (k) The acknowledgments may be taken either in term time or in vacation: but it is most advisable for them to be taken in vacation, if that be practicable, in order that they may be ready to be arraigned at bar at the commencement of the ensuing term. It is of the utmost importance to the validity of the recovery that the warrant of attorney be regularly taken; for if it be bad or informal, the recovery suffered in pursuance thereof will be bad likewise. If there be many vouchees, the warrant of attorney must be joint; and if the distance of their residences, or any other circumstance, renders separate acknowledgments necessary, they must still be all made on the same piece of parchment. (l) Where, in

(k) For the forms, see App. XCHL. XCIV., XCV. See also the rules, Hil. Term. 14. Trin. T. 30. and Mich. Term. 39 Geo. 3. Appendix N. O. Q. An affidavit of a Commissioner that the wife of a vouchee was examined separately from her husband cannot be received or filed if not made at the time the acknowledgment was taken. *Breach d. Hewitt t. Brierley* v. 4 Moore, 113. And

it ought not to be on a piece of parchment separate from the general affidavit of acknowledgment. (l) *Jennings d. Street t. Vernon and Others* v. 3 B. and P. 361. But if the voucher be not joint, it will not be any objection to the passing of a recovery, that the warrants of attorney of each set of vouchees are on separate pieces of parchment.

the caption of an acknowledgment of a warrant by a married woman, the words were "*consented to acknowledge*" instead of "*consented to and acknowledged*" the recovery, was not permitted to pass. (m)

The *dedimus* recites that a writ of *summons* to warrant(n) is issued forth against the vouchees ; and therefore the warrant of attorney should bear date after the teste of this writ, and before the time that it is stated to be returnable in the writ of *dedimus*. (o) If, however, the acknowledgments of the vouchees should not happen to have been taken on or before the return of the writ of *summons*, they may be taken afterwards ; but then the cursitor, when the *dedimus* and warrants are returned to him for the writ of *mittimus* and *transcript*, either enlarges the return of the writ of *summons* to some return subsequent to the date of the acknowledgments, and reseals the writ of *dedimus*, or he makes out a new *dedimus* with an enlarged return of the writ of *summons*, retaining the old one as his authority ; but if a new *dedimus* be made out, the commissioners must themselves indorse their return upon it in the same manner as they did

(m) *Paul*, vouchee, 5 Taunt. 661.

(n) See App. LXXXVIII.

(o) The writ of *summons* had

originally nine returns : but they have been abridged to four by 24 Geo. 2. c. 28.

upon the old one. (p) This alteration in the writ of *summons* is made to warrant the captions; for it would be error (q) if the acknowledgments appeared to have been taken after the return of the writ of *summons*, because the attorney appointed is supposed to appear then in pursuance of the warrant, at which time the judgment is supposed to be given. (r) Therefore, if the acknowledgments are not taken on or before the last general return of the term, it cannot be a recovery of that term, for the writ of *summons* cannot then be made returnable earlier than the first return of the ensuing term. (s) And if the recovery be not passed at bar, by the tenant's appearance at Court, in the term in which the writ of *summons* is stated to be returnable, there must for the same reason in that case also be a renewed *dedimus*, reciting the writ of *summons* to be returnable in the term, in which it is intended to be passed at bar, by the actual appear-

(p) *Bevir d. Robbins t. Beech*, v., 1 Taunt. 418.

(q) *Anon.* 4 Taunt. 452.

(r) *Sheepshanks and Wife v. Lucas*, 1 Burr. 410.

(s) Where one of the vouchees refused to acknowledge the warrant until several terms after

the other vouchees had acknowledged their's, the Court permitted the recovery then to pass. *Robinson and Others'* case, 4 Taunt. 618. *Barnard v. Woodcock*, 2 W. Black. 1201. S. P. 1223.

ance of the tenant in Court, (t) which must be actually returned by the Commissioners themselves.

The writ of entry.

When the warrant of attorney has been acknowledged, it should be taken, together with the *dedimus*, to the Cursitor, who will thereupon make out the writ of entry. (u) This writ ought to be bespoke before the essoign day of the term next after the acknowledgment was taken, because it must be made returnable before the time when that acknowledgment appears to have been taken, the writ of *summons to warrant* not being supposed to issue until after the appearance of the tenant on the return of the writ of entry; and it has already been stated that the Cursitor cannot, without an order for the purpose, make out an original writ of a return past, unless he receive instructions for it before the essoign day of the succeeding Term. To obtain this order a *petition*, stating the reason why the writ was not bespoke in time, should be presented praying that the Cursitor may issue a writ returnable at the time desired; (v) when,

(t) Where the tenant appeared in Easter Term, an application was made to have the appearance entered of Hilary Term: but the Court would not permit it. *Buz-*

*zard d. Were t. Baxter v. 4 Taunt. 589.*

(u) For the writ of entry, see Appendix XCVII.

(v) For the petition, see Appendix XCVIII.

upon reading the warrant of attorney which must accompany the petition, an order will be made accordingly. The *allocatur* of one of the Judges of the Court of Common Pleas must be written on the duplicate copy of the *præcipe* and warrant of attorney ; and when the Judge signs the *allocatur*, the *writ of entry* must be produced, upon which he will mark his initials. (w) Judge's *allocatur*.

The acknowledgments of the vouchees having been taken, the writ of *entry* sued out, and the Judge's *allocatur* obtained, the next thing to be done is to get the tenant's appearance recorded, and the recovery *passed at bar*. (x) Passing at bar. For this purpose a fair copy of the *præcipe* must be made upon a sheet of foolscap paper book-wise, with the names of the tenant and vouchee in the margin. (y) This *præcipe* must be annexed to the writ of *entry* and other documents, and the

(w) See Rule Trin. T. 30 Geo. 3., Append. O., and XCIX.

(x) It has already been stated that the death of the tenant or vouchee before the attorney has actually appeared at bar will vacate the recovery, (*ante*, p. 38.) But, in a case where the tenant to the *præcipe* was confined to his house in

London by illness, he was allowed to appear at bar by attorney ; and a person was permitted to be constituted an attorney for that purpose who was not an attorney of any Court at Westminster Hall. *Cotton d. Murphy v. Spencer v.* 5 Taunt. 355.

(y) See Appendix CI.

tenant should attend the Court of Common Pleas at *Westminster* therewith, any day in *Term* whilst the Court is sitting : the writ of *entry*, (z) with the other proceedings, must be given to one of the Serjeants, whose clerk will procure the Judge's *allocatur* thereon, if that has not already been done at chambers. The Serjeant will then, after looking over the proceedings, and on seeing the tenant, subscribe his name to the *paper* copy of the *præcipe*, and hand it with the other documents, to one of the prothonotaries, to record the tenant's appearance, which the prothonotary will do upon the *præcipe*. (a)

Com-  
pounding  
at the alien-  
ation office.

The writ of *entry* must then be taken to the *Alienation Office*, for the fine payable to the King upon it to be *compounded*, which is done in the same manner as upon a writ of covenant to levy a fine ; (b) for though there is no agreement upon the writ of *entry*, yet, by stat. 32 H. 8. c. 1. s. 15., fines for alienation are to be paid upon writs of *entry* in like manner as upon alienations by fine.

*Mittimus*  
and trans-  
cript.

Then the *dedimus*, which is returnable into Chancery, with the warrant of attorney and affidavit of caption, &c., must be taken to the Cur- sitor, who will thereupon make out the *mittimus*

(z) See Rule Trin. T. 30 G.  
3. Appendix O.

(a) See Appendix CI.

(b) See p. 130, 131, *ante*.



and *transcript*: (c) The Cursitor retains the *dedimus* and original warrant of attorney, but returns the affidavit and duplicate warrant of attorney.

The Attorney-General's signature to the writ of *entry* must next be obtained.

Attorney-General's hand.

When this has been done, the writs of *summons* and *seisin* (d) must be prepared, and also the return of the latter: they must be *signed* at the prothonotary's, and *sealed* at the seal office; after which the writs of *entry*, *summons*, and *seisin*, must be taken to the *Return Office* at the prothonotary's, to be returned; whereupon the clerk will indorse the return on the writs of *entry* and *summons*, and add the sheriff's name to the return of the writ of *seisin*. He will at the same time mark the *mittimus* and *transcript* with the seal of his office, and enter in his book the names of the parties, of the county and parish in which the lands lie, the returns of the writs, and the attorney's name.

Writs of *summons* and *seisin*.

Return office.

The drafts of the *summons* and *recovery rolls* must next be prepared. (e) The former com-

Entries upon the rolls.

(c) See Appendix CII., CIII.

(d) See Append. CIV., CV. for these Writs.

(e) If the recovery be not entered at the time, yet, if

it appear by the prothonotary's minutes to have been passed at bar, the Court will permit it to be entered afterwards, but without prejudice to subsequent

mences with the count against the tenant, which is followed by his appearance, defence, and voucher; then comes the award of the summons against the vouchees, concluding with the appointment of the tenant's attornies if he be not an attorney of the Court of Common Pleas. (f) The *recovery roll* commences with the entry of the *mittimus* and *transcript* of the vouchee's warrant of attorney. Then comes a recital of the *summons roll*, which is followed by the appearance of all the parties, the vouchee's warranty and the count against them; the vouchee's defence, and voucher of the common vouchee; his warranty, and the count against him; his defence, the imparlance and judgment, concluding with the award and return of the writ of seisin. (g) The draft *exemplification* of the recovery must also be prepared, which contains the substance of the recovery roll. (h) All the proceedings should then be taken to the clerk of the recoveries, at the prothonotary's, who will settle the drafts of the rolls if any difficulty occur in the preparation of them, and give out the proper rolls upon which the entries must be made, and the recovery exemplified. (i)

purchasers. *Anon.* 3 Atk.

Rep. case 185.

(f) See Appendix CVII.

(g) See Appendix CVIII.

(h) See Appendix CXI.

(i) After the recovery has

When the entries upon the rolls and the exemplification are completed, they must be taken with the writs of *entry*, *mittimus*, *transcript*, *summons*, and *seisin*, to the clerk of the recoveries, who will deliver out the *remembrance* and *docket rolls* of the Court, with instructions how they are to be entered. (*k*) After this is done, the clerk of the recoveries will examine the whole, and get the *exemplification* signed and sealed, or it may be done by the attorney himself. When the recovery is passed by the prothonotary, and the *exemplification* signed by him, the duplicate warrant of attorney and affidavit of acknowledgment, as well as the writs, are left with him, and he afterwards files them with the *custos brevium*.

Passing  
with the  
prothono-  
tary.

When a recovery is to be suffered with treble voucher, the tenant appearing in person and the first and second vouchees by attorney, on warrants acknowledged before commissioners, the writ of *dedimus* for taking the first vouchee's

Of suffering  
a recovery  
with treble  
voucher;  
the tenant  
in person  
and the  
vouchees  
by attorney.

been passed at bar and through the *Alienation Office*, and the *mittimus* and *transcript* obtained from the cursitor, the clerk of the recoveries will, if desired, do all that is neces-

sary for completing the recovery; and as it is a considerable saving of time and trouble, and the charges are moderate, it is very common to adopt this plan.

(*k*) See Append. CIX., CX.

warrant must be obtained, the acknowledgment taken, and the affidavit thereof made as before described. (l) Then, after the expiration of four days (the *quarto die post*) from the return of the writ of summons recited in the first *dedimus*, the *dedimus* and return must be taken to the Cursitor, with the name of the second vouchee or vouchees, and also the names of the commissioners who are to take the acknowledgment of their warrant, which may be put in the form of a *præcipe*; (m) and the cursitor will make out the second *dedimus* (n) accordingly. The acknowledgment of the second warrant of attorney must then be taken, and the *dedimus* returned, in the same manner as the first. So that in this case it is necessary to sue out two writs of *dedimus*, namely, one for each vouchee, or each set of vouchees; and to make out and ingross two distinct *præcipes* and *warrants of attorney*, with duplicates of each. When this is done, all the documents must be left with the cursitor, who will thereupon make out the writ of *entry*. The Judge's *allocatur* of both warrants of attorney must then be obtained, and the recovery passed at bar, and at the alienation office in the manner already described, (o)

(l) See p. 145, 6, 7. *ante*.

(n) See Appendix CXV.

(m) See Appendix CXIV.

(o) See *ante*, p. 151, 2.

but it is only necessary to make one paper copy of the *præcipe*. (p) When this is done, the writs, warrants, and affidavits, must be taken to the cursitor, whereupon he will make out writs of *mittimus* and *transcript* on each *dedimus*, after which the recovery may be completed in the same manner as when there is only one voucher, (q) except that in this case there are *two* writs of *summons*, one against the first vouchee, or set of vouchees, and another against the second, (r) although there is only one writ of *entry* and one writ of *seisin*. The entries commence with the *first summons* roll, (s) which comprises the count against the tenant; his appearance, defence, and voucher of the first vouchee; the award of the summons against him, and the appointment of the tenant's attornies: this is followed by the *second summons* roll, (t) which begins with the *mittimus* and *transcript* of the *dedimus*, and first vouchee's warrant of attorney, and a recital of the contents of the first summons roll, followed by the appearance of the demandant, tenant, and first vouchee; his warranty, the count against him thereon, his defence and voucher of the second

(p) See Appendix CXVIII.      against the second vouchee.

(q) See *ante*, p. 153, 4, 5.      (s) See Appendix CXIX.

(r) See Appendix CXIII.      (t) See Appendix CXX.

for the Writ of Summons

vouchee, concluding with the award of the summons against him : then comes the *recovery roll*, (u) which begins with the *mittimus* and *transcript* of the *dedimus* and second vouchee's warrant of attorney, and a recital of the contents of the summons rolls ; this is followed by the appearance of all the parties, the warranty of the second vouchee, the count against him thereon, his defence and voucher of the common vouchee ; his defence, the imparlance and judgment, concluding with the award and return of the writ of seisin. The *exemplification* in this case varies from that in the former, as will be seen by the formal part of it. (x)

Of suffering a recovery with double voucher, the tenant & vouchee in person.

If the recovery is to be suffered with *double voucher*, the tenant and vouchee both appearing in person, a *præcipe* must be prepared in the same manner as for a *dedimus*, omitting of course the names of commissioners, (y) whereupon the cursitor will make out the writ of *entry*, which should be bespoke previous to the *essoign* day of the term. A *paper copy* of the *præcipe* must be made for the purpose of passing the recovery at bar, (z) and annexed to the writ of *entry* ; and the tenant and vouchee

(u) See Appendix CXXI.

(y) See Appendix CXXIV.

(z) See Appendix CXXII.

(\*) See Appendix CXXV.

must attend at *Westminster* during term, when the Court is sitting, to have their appearance recorded accordingly, which is done through the intervention of a Serjeant, as before described, (z) the prothonotary writing at the foot of the *paper præcipe* the words “*at bar*” only. If a married woman be a party, the Serjeant must examine her separately as to her voluntary consent ;—and if any of the parties be a *peer*, he stands in the middle of the bar, between the King’s Serjeants. One Serjeant for each party pleads thereon something in the old way, (a) by stating to the Court the substance of the entries on the rolls as far as the imparlance. This counting, as it is called, commences by the Serjeant for the demandant reciting the count against the tenant ; then the Serjeants for the tenant and vouchee, recite the substance of the subsequent entries ; and it ends with the Serjeant for the last vouchee craving leave to imparl. The writ of *entry* must then be *compounded*, and the fine paid, the *attorney-general’s signature* procured, and the writ of *seisin* sued out as before directed : (b) but in this case it is obvious the *allocatur*, and the writs of *summons*, *mittimus*, and *transcript*, are unnecessary. The

(z) See *ante*, p. 152.

(a) See Wood’s *Conveyancer*,  
title *Recovery*. There must

be a *præcipe* for each Serjeant.

(b) See *ante*, p. 152, 3.

whole of the entry is comprised in the *recovery roll*, (c) which begins with the count against the tenant; this is followed by his defence and voucher of the vouchee, his appearance and warranty; then comes the count against him, his defence and voucher of the common vouchee, his appearance and warranty; which is followed by the count against him, his defence, the imparlance, and judgment, concluding with the award and return of the writ of *seisin*. It will be seen that this *exemplification* (d) also varies a little from the former ones, in the formal part of it.

Double  
voucher,  
tenant and  
vouchee by  
attorney.

Where both the tenant and vouchee appear by attorney, a *dedimus potestatem* must be sued out to take the tenant's warrant in the same manner as is before described with respect to that of the vouchee, except that in the *præcipe* for the tenant, the word *tenant* is to be inserted instead of "*vouchee*," and the words in the warrant applying to the vouchee must be omitted. (e) After the writ of *entry* is obtained, the judge's *allocatur* of the tenant's warrant must be procured as well as of the vouchee's, and all the documents may be left with a Serjeant to

(c) See Appendix CXXVI.

(d) See Appendix CXXVII.

(c) See Appendix XCII.

note a.



get the recovery recorded at bar. The *mittimus* and *transcript* of the tenant's appearance must be entered at the beginning of the first or only summons roll, and then follows the usual entry on the same roll as in other cases.

Where any of the vouchees reside in Scotland, Ireland, or other parts beyond the seas, it has already been stated, (*d*) that the manner in which their warrants of attorney are to be taken is regulated by express rules of Court, (*e*) which have been held to be equally applicable to fines; it is, therefore, unnecessary to repeat the mode of proceeding in these cases, the same having been already amply detailed. (*f*) But as some cases of informality in taking the acknowledgment of warrants abroad have occurred, it may not be improper, by way of caution, to glance at one or two of them. Where a recovery had to be suffered in *Holland*, the necessary documents for taking the acknowledgments were engrossed on parchment, and sent to the commissioners there: but the law of that country requiring all documents bearing the certificate of a *Dutch* notary to bear a stamp which can only be imprinted on paper, the documents were returned written on paper so stamped and

Vouchees  
residing in  
Scotland,  
Ireland, or  
other parts  
beyond the  
seas.

(*d*) *Ante*, p. 122.

Mich. T. 39 Geo. 3. Appendix Q.

(*e*) Hil. T. 14 Geo. 3. See

Appendix N. See also (*f*) See *ante*, p. 123—126.

certified. The Court would not receive the acknowledgment and proceedings so written on paper: but they enlarged the return of the *dedimus* and permitted the writ to be resealed, in order that the documents might be properly executed on parchment, and returned during the Term, which was accordingly done, and the recovery was permitted to pass in the usual way. (g) And where, in a recovery acknowledged in *Guernsey*, the commissioners neglected to indorse their names on the *dedimus*, the Court would not permit it to pass, but ordered the documents to be returned for such indorsement. (h) But the Court permitted a recovery to pass where the certificate of the notary (that the party who made the affidavit of the caption, and acknowledgment of the warrant of attorney was sworn in his presence before the deputy fiscal at *Cape Town*) omitted the day and month in the body of the certificate, but stated it correctly at the end, where the notary witnessed the instrument, the date of the jurat of the affidavit being the same as that at the foot of the certificate. (i) And a recovery was allowed to pass, although the words “*their attorney*” were omitted in the

(g) *Tatham d. Baxendale*

*ford v.*, 6 Moore 69.

t. *Taber v.*, 4 Moore 481.

See also 2 Brod. and B. 65.

(i) *Hinde d. Hinde t. Bland*

*v.*, 2 Brod. and B. 7.

(h) *Watts d. Milne t. Pick-*

warrant of attorney given by the vouchees. (k) And a recovery was permitted to be completed *nunc pro tunc*, which had been delayed in consequence of one of the vouchees having left this country and resided abroad on account of ill-health. (l) So a recovery was permitted to pass, although in the affidavit of acknowledgment, notarial certificate, and the other necessary instruments to perfect the same, *Demerara* had at first been improperly styled an *island*; which word had been struck out by some person there, and that of *colony* substituted by way of interlineation. (m) The acknowledgment of a recovery was taken at *Meerut* in the *East Indies*, and there was an erasure on it, of which no notice was taken by the magistrate before whom the acknowledgment was made. The erasure, however, only affected an impossible date, "*Meerut Jan. 3d*, one thousand eight hundred and twenty-three," the word "*three*" having been erased, the writ having only issued Jan. 2, 1823. There was an affidavit that the acknowledgment was taken before F. K. Smith, a magistrate at *Meerut* competent to administer

(k) *Wood d. Aldersey t.*, 1 Bing. 212. (m) *Bayley d. Bremridge t. Adams v.*, 7 Moore 372.

(l) *Carr d. Phillips t. Evans* 1 Bing. 72. S. C. v., 5 Moore 557.

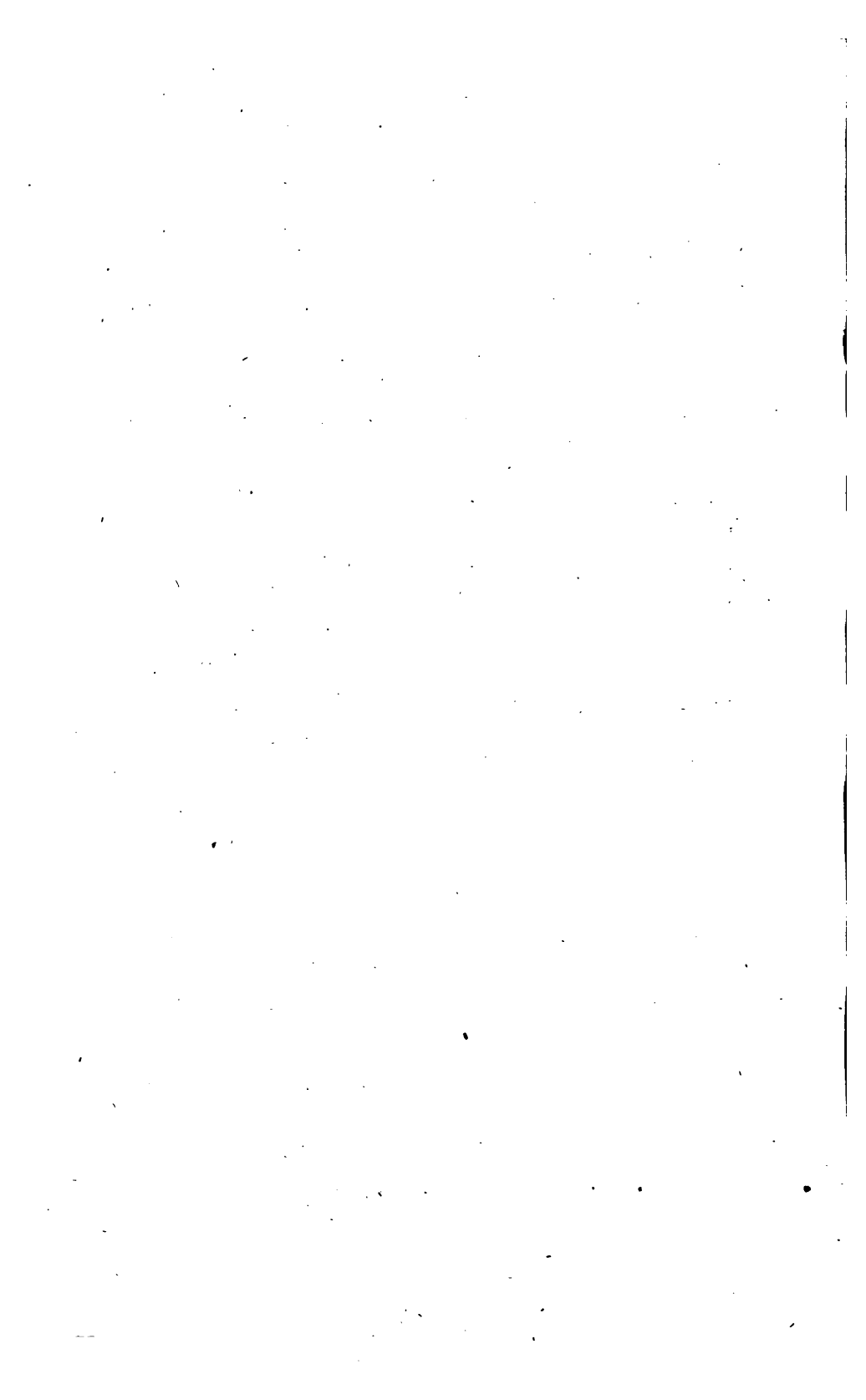
an oath, and that no notary public resided in the district; but there was no affidavit authenticating the magistrate's signature. Under these circumstances the Court refused to let the recovery pass. (n) The documents relating to a recovery of premises in *Northumberland* did not reach *London* till the first day after *Easter Term*; the mistake was not discovered; the proceedings went on in the subsequent *Trinity Term*; and the recovery came to the cursitor's office in *Michaelmas Term* following when the Court upon motion allowed the recovery to pass as of *Easter Term*. (o) And in another case where the recovery had failed to be completed in the Term in which it was intended to be passed through the refusal of one of the vouchees to accede to it, the Court in a subsequent Term permitted it to be completed for the benefit of the other parties. (p)

The Court has also extended indulgence in cases where warrants of attorney had to be acknowledged in very distant parts beyond sea, and it was impossible to arraign the recovery of the Term in which the writ of summons was returnable. In these cases an affidavit must be

(n) *Thistlethwayte* d. *Maidment* t., 2 Bing. 361.  
(o) *Anon.* 8 Taunt. 75.

(p) *Wardale* d. *Bell* t. *Robinson* v., 4 Taunt. 618.

made stating circumstantially the proceedings that have been taken, and the cause of the delay—as that the recovery was intended to be suffered of a certain Term past;—the day on which the documents were sent to be acknowledged, and when they were received; that the delay arose from the distance at which the vouchees resided; and adding “that the vouchees A. B. and C. his wife are still living to the deponent’s belief, he having received intelligence from them on—and that they still reside at Kingston in the island of Jamaica.” Upon the production of this affidavit, and the documents in all respects perfectly taken, the Court will order the recovery to be completed.



## APPENDIX.

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*RULES and ORDERS of COURT, and STATUTES,  
relating to the levying, suffering, and per-  
fecting, of FINES and RECOVERIES.*

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### A.

*[Order of the High Court of Chancery made in the reign  
of Elizabeth, prior to 1591.]*

WHEREAS great numbers of her Majesty's subjects, upon their purchasing of lands and tenements, have for their better assurance, used to pass their conveyance, by levying of fines according to the law and statutes in that behalf provided, whereby her Highness hath had yearly great commodity by the fines and postfines thereupon arising.

Divers attornies and solicitors have now of late devised and contrived to pass in one fine lands and tenements purchased and bought by

Restrain-  
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rests in the  
same fine.

divers several men of divers several persons, the one being a total stranger to the other's purchase, by which kind of practice where her majesty should have the profit of three or four *postfines* or more, by reason of this including so many in one, her Highness will receive now but one, and also shall lose the profit of the seals of so many writs; and also the right honourable the Lord Chancellor, the Master of the Rolls, and the Justices of Assize shall lose very much of their fees due unto them, and divers officers of the Chancery and Common Pleas shall be very much prejudiced.

To prevent the practice likely in time to grow to the great damage of her Highness, and great numbers of others, it is by the right honourable Sir Christopher Hatton of the most noble order of the Garter, Knight, Lord Chancellor of England ordered, That if any note be brought to any of the cursitors to pass any writ of covenant which shall contain any more than one demandant, and one deforçant, (except coparceners, joint-tenants, and tenants in common,) that such cursitors or cursitor shall make stay of passing the said writ of covenant, until the concord of the same be brought under the Justice's hand unto them or him; and then if it shall appear that there are several warranties contained in the same concord, or upon examination or other-



wise that the parties contained in the fine be not co-parceners, joint-tenants, or tenants in common, that then the said cursitors or cursitor shall (except the party who shall pursue the same will sue forth so many writs as the due and orderly proceedings shall require,) make stay of proceeding in or passing the same. (a)

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B.

[*Easter Term, 43 Eliz. 1601.*]

WHEREAS, by the ancient usage grounded upon the laws and statutes of this realm, there was in every writ of *dedimus potestatem* to take the acknowledgment of any fine, a Knight or a Serjeant at law named and meant to be of the *quorum*, unless the acknowledgment were taken by some of the justices at Westminster or of the Barons of the Exchequer, being of the coif, which ancient usage was duly observed till about thirty years last past, since which time such writs of *dedimus potestatem* have been commonly directed to persons of mean calling; and although a Knight were named therein, yet it was *pro forma tantum*, and he never sealed unto it, but the acknowledgment taken by the rest, being for the most part men of

Order requiring the name of a knight to be inserted in writs of *dedimus potestatem*.

(a) See stat. 32 Geo. 2. c. 14. *Infra*, Appendix, V.

mean calling and commonly unlearned and unskilful in such cases, by reason whereof the great and reverent solemnity which ought to be inviolably observed in fines is neglected, the said fines levied being the highest bars and records, of greatest power and force binding as well privies as strangers, unless they make their claim in due time, and yet the said fines by such means are abused, and the acknowledgment of infants and women coverts not duly examined, ideots and such like persons have been taken and certified by such commissioners; and so it was this present Easter Term, in the forty-third year of her Majesty's reign, proved in open Court on oath, in a fine taken by such commissioners in the county of Lincoln, and divers of the like sort have been certified, as it was this day also testified by the clerk of the Fines; which abuses and disorders are very common and great, and meet in justice to be reformed. Therefore, to prevent such great inconveniencies, and to the intent that fines may be taken by men of credit and reputation according to the law and custom of this realm,

*It is this day ordered,* that from and after the second return of Trinity Term next ensuing, no *dedimus potestatem* directed to commissioners to take the acknowledgement of any fine shall be received or recorded in this Court, un-

less the same acknowledgment be taken by some of the justices of the one bench or the other, or of the said Barons of the Exchequer, or Serjeants at law, or that a knight be of the *quorum*. (a)

## C.

[*Trinity Term, 22 Charles I. 1646.*]

WHEREAS this Court is informed that divers writs of *covenant*, and other writs whereupon fines be levied, and writs of *dedimus potestatem*, for acknowledging of fines, and divers writs of *entry*, *summons*, and *seisin*, and warrants of attorney, whereupon *common recoveries* be suffered, have been of late times lost and kept unfiled; AND WHEREAS it hath now, and this last Term appeared to this Court that great damage hath accrued, and still is likely to accrue to several persons by the misprisions and neglects of attorneys, clerks, and officers herein; AND WHEREAS, by the statute made 23 Eliz. c. 3. (b) for avoiding of errors, and such mischiefs, provision is made that the same writs and other proceedings thereupon may be inrolled, and that the inrolment thereof shall be as good, sure, and valid, in the law as the same being extant were

Order requiring writs of covenant, entry, summons, seisin, &c. to be duly filed, &c.

(a) See orders L. and Q., *infra* in this Appendix.

(b) See this Appendix, *infra*, T.

or ought by law to be ; AND by the same statute it is also enacted, that the justices of this Court for the time being (other than the Chief Justice) should take order in all needful and convenient matters for the said inrolments, giving them power also to examine and *punish by fine and amerciaments* any clerks, sheriffs, deputy, attorney, or other person, for his or their misprision, contempt, and negligence, touching the premises : THEREFORE, this Court DOTH DECLARE AND DIRECT, That all attornies, clerks, sheriffs, deputies, and officers, be from henceforth more careful to file their writs of *covenant, entry, summons, and seisin*, and other the writs in the statute mentioned, and to make due *returns* thereof, and to do all other things pertaining to their several offices which the law requires to be by them performed, touching the said fines and recoveries, upon pain of such fines and amerciaments as the Court may assess upon them by the said statute, which this Court declares they will from time to time put in full execution, according to the said act of Parliament, for the punishment and prevention of the great mischiefs which shall or may happen by such misprisions, neglects, and contempts as aforesaid.

## D.

[*Easter Term, 29 Car. 2. 1677.*]

Forasmuch as it hath been represented to this Court, by the *Clerk of the King's silver* of this Court, that it is not possible for him to take care of the stopping of such fines, as by order of Court he is enjoined to stop, by reason of the multitude of old orders concerning this matter which have been granted and never recalled, so that he cannot know which orders stand in force, and which are determined ;

*Caveats for stopping fines to be renewed every term.*

IT IS THEREFORE ORDERED, that for the future all manner of *caveats* and orders for the stopping any fines shall be renewed every term, and copies thereof left with the clerk of the *King's silver*, for which he is to demand only his ancient fee of 3*s.* 4*d.* the term ; and in default thereof all *caveats* that shall not be so renewed shall lose their force and be void.

## E.

[*Michaelmas Term, 29 Charles 2, 1677.*]

Through the great complaints that have been made to this Court, of the neglects of attornies and clerks to file the writs and warrants of attorney, whereupon *common recoveries* have been

*Prothonotaries on seizing executions to retain the writs and warrants of attorney.*

suffered, and of the mischiefs that have thereupon happened,

And for prevention of such mischiefs and dangers in times to come, *It is ordered*, as well by the consent of the *custos brevium* as of the *prothonotaries* and *clerk of the warrants* of this Court,

That at all times hereafter when the said *prothonotaries* shall examine and sign the exemplifications of such recoveries, they in their respective offices do then cause all the said writs, being sealed and duly returned, and all *warrants of attorney* thereupon taken without writ, to be left in their hands to be filed, with the usual fees for filing the same, without *post terminums*.

And the  
*custos bre-*  
*vium* after-  
wards to  
receive and  
file them.

And that the said *custos brevium* and *clerk of the warrants*, or their known deputies, shall receive from the said *prothonotaries* in their respective offices their said writs and warrants of attorney; with the said fees for filing thereof, in manner following: to wit, for the said writs and warrants prosecuted and perfected of this present Term, and every other Term of Saint Michael, in Easter Term then next following; and for the said writs and warrants of attorney of every Hilary Term, in Trinity Term next after; and for the said writs and warrants of attorney of every Easter Term, in Michaelmas Term next after; and for the said writs and

warrants of attorney of every Trinity Term, in Hilary Term then next following.

And that the said *custos brevium* and clerk of The *custos brevium* to give receipts to prothonotaries for them. the warrants, or their said deputies, shall give receipts under their hand of all such writs and warrants as shall be from time to time received from each of the said prothonotaries, by way of duplicate, containing the county where the lands lie ; the names of the demandants, tenants, and vouchees, who come in by writs of summons ; and also of the attorneys and clerks who prosecuted the said recoveries.

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F.

[*Easter Term, 30 Charles 2., 1678.*]

SS. The 25th April. Whereas lately, to wit, in the Term of St. Michael last past, for the avoiding of errors, oftentimes happening by the negligence of attorneys and clerks of the Court here, for want of due prosecution and filing of *writs of entry, summons, seisin and warrants of attorney*, upon which common recoveries are suffered, *It was ordered* by the Court, by the assent of the *custos brevium, prothonotaries, and clerk of the warrants* of this Court, "That whensoever the said prothonotaries, in their offices respectively, should examine and sign any recovery by the Court here exemplified, the said

Order requiring writs of entry to be signed by the Attorney-General.

“prothonotaries should see that the writs and warrants aforesaid should be duly executed and returned, and left in the hands of those prothonotaries respectively, with the usual fees for filing of the same.” Now upon complaint of *Sir William Jones*, Attorney-General of our Lord the King, to the Justices of this Court made, that certain attornies and clerks of this Court have neglected to bring their *writs of entry* to be signed by him the said Attorney-General, under his hand, as belongs to his office according to the ancient course, in fraud of the said Attorney-General of his fees in that behalf,

IT IS ORDERED, that the said prothonotaries for the future, on examination and signing of such recoveries, shall take care that every such writ of entry be signed by the said Attorney-General, otherwise the said prothonotaries shall not sign such exemplifications until the writ thereof shall be so signed; and the said Attorney-General is desired to sign without delay the said writs delivered to him for his hand to them.

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G.

[*Easter Term, 34 Charles 2, 1682.*]

Protho-  
notary not to  
file writs of  
entry until  
signed by  
the Attor-  
ney-Gener-  
al.

SS. The 13th May. Upon complaint of *Sir Robert Sawyer*, Knight, the King's Attorney-General, made to the Justices of this Court, that many writs of *entry en le post*, which by him as



Attorney-General under his hand ought to be signed, have been hitherto prosecuted by divers attornies and clerks of this Court, and without the hand of the said Attorney-General first had, are affiled in fraud of the said Attorney-General of his fees, and against the rule of Court here in that behalf made. (c)

IT IS ORDERED that the prothonotaries of this Court take care and that every one of them in his office respectively see, when he hath examined any recovery by the said *writ of entry*, that that writ be signed by the Attorney-General, and that the prothonotary shall receive no such writ to be filed unless it hath been signed by the Attorney-General aforesaid.

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H.

[*Easter Term, 9 Anne, 1710.*]

WHEREAS by an act made in the three and twentieth year of the reign of Queen Elizabeth (d) it was amongst other things enacted,  
 “ That every person who should at any time  
 “ thereafter take the knowledge of any fine,  
 “ and should certify the same, that such person  
 “ should with the certificate thereof certify also.

Order requiring oath to be made before a judge of the Common Pleas as to the due acknowledgment of fines taken before commissioners under writs of *dedimus potestatem*.

(c) Easter Term, 32 Charles 2. F.

(d) See *infra*, Appendix T.

“ the day and year when the same was know-  
 “ ledged ; and that no person who should take  
 “ any such knowledge of any fine should be  
 “ bounden, or by any means enforced to certify  
 “ any such knowledge, except it were within  
 “ one year next after the said knowledge taken ;  
 “ and that no clerk or officer should receive any  
 “ writ of covenant whereupon any fine was  
 “ thereafter to pass, unless the day of the know-  
 “ ledge of such fine should appear in or by  
 “ such certificate, upon pain of forfeiting five  
 “ pounds.” AND WHEREAS, contrary to the in-  
 tent and meaning of the said statute, the days  
 and years of the captions of several fines have  
 been rased and altered after the same have been  
 acknowledged, and other days and years in-  
 serted, and which sometimes have appeared to  
 be after the death of the cognizors in such  
 fines, by reason whereof several disputes have  
 arisen, great delays have been had in passing  
 such fines, and that several fines have been  
 vacated thereupon. Now, for the preventing  
 the like mischiefs and inconveniencies for the  
 time to come,

See Rules  
 Hil. Term,  
 17. & Trin.  
 Term 26 &  
 27 Geo. 2.  
 1474, L.,  
 M., by  
 which affi-  
 davits on  
 parchment

IT IS ORDERED by the Justices of this Court,  
 that for the future no fine whatsoever taken and  
 acknowledged before any commissioners by vir-  
 tue or colour of any special *dedimus potestatem*  
 to them directed, do pass the Queen's silver

office, and the Queen's silver of such fine be recorded, unless oath be made before the Lord Chief Justice or some other justice of this Court, of the due execution of the said fine, and also of the day and year when each cognizor so executed the same, where a rasure in the day or year shall appear in the caption thereof; and that no fine so acknowledged before such commissioners, in case of such rasure, be received and entered by the clerk of the Queen's silver of this Court, before there be an *allocatur* reciting the day and year of each particular cognizor's acknowledgment, under the hand of the said Lord Chief Justice, or some other justice of this Court, for the passing of the said fine first had and obtained.

are substituted for personal oaths.

AND IT IS FURTHER ORDERED that no fine whatsoever, taken and acknowledged before the said Lord Chief Justice, or any judge of assize or serjeant at law, if the date of the caption of such fine shall appear to have been rased, do for the future pass the Queen's silver office, and the Queen's silver of such fine be recorded by the said clerk of the Queen's silver, before there be an order under the hand of the said Lord Chief Justice, or some other justice of this Court, for his passing and entering such fine first had and obtained.

AND IT IS LIKEWISE ORDERED, that after any

fine whatsoever shall have passed the said Queen's silver office, and the Queen's silver of such fine be recorded, that neither the *præcipe* nor *caption* of any such fine or writ of *dedimus potestatem*, or writ of covenant, by which any such fine be passed, shall be rased or altered before there be an order under the hand of the said Lord Chief Justice, or some other justice of this Court, for the doing thereof, and for the amending of all entries made from such writ or writs, first had and obtained.

## I.

[*Trinity Term, 11 Anne, 1736.*]

Recoveries. *Præcipes* to be marked with prothonotary's name, and to be delivered into Court by a serjeant when passed.

IT WAS DECLARED by the Court that all *præcipes* for the passing of recoveries should be marked with the proper *prothonotary's* name; and at the time of passing the same should be *delivered into Court by one of the serjeants*, otherwise no recovery to be entered.

## K.

[*Trinity Term, 10 Geo. 2., 1736*]

Recoveries. *Præcipes* to be entered on the remembrance of each prothonotary.

ATTORNIES are desired to take notice that from and after the first day of next *Michaelmas* Term, all *præcipes* for recoveries and writs of *scire facias* be entered in the office on the remem-

brance of each respective prothonotary, to whom they belong, and that henceforth no remembrances will be lent out for that purpose.

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L.

[*Hilary Term, 17 Geo. 2. 1743.*]

WHEREAS by a rule of this Court made in the thirteenth year of the reign of his late Majesty, King George, *It was ordered*, that no fine whatsoever taken and acknowledged before any commissioners, by virtue of a writ of *dedimus potestatem* to them directed, be allowed to pass, unless some person present when such fine was taken and acknowledged did personally appear before the Lord Chief Justice, or some other justice of this Court, and was examined upon oath touching the due execution thereof, and particularly whether such person knew the parties acknowledging such fine; which rule has been found by experience to be attended with inconveniences, and has not answered all the good purposes for which it was intended; for remedy thereof, and the better to ascertain the practice for the future,

Affidavits of the due acknowledgment of fines taken before commissioners under *de. pos.* substituted for oaths *viva voce*. See *ante*, p. 178, in the margin.

IT IS ORDERED by this Court, that from and after the first day of next Michaelmas Term, instead of an oath made *viva voce* of the due acknowledgment of such fines, an affidavit or

What they  
are to con-  
tain.

Judge's al-  
locatur.

affidavits in writing on parchment shall be made and annexed to every fine so taken as aforesaid, in which affidavit or affidavits the person or persons making the same shall swear, that he or they knew the party or parties acknowledging such fine; that the same was duly signed and acknowledged; that the party or parties acknowledging and also the commissioners taking the same were all of full age and competent understanding; that the *femes covert* (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same; and that the cognizor or cognizors, and every of them, knew the same to be a fine to pass his, her, or their estate or estates; which fine, together with such affidavit or affidavits annexed, shall be transmitted to the said Lord Chief Justice, or some other justice of this Court for his *allocatur* thereon; and such affidavit or affidavits shall remain annexed to such fine, and be left with the same in the proper office. AND IT IS ORDERED that all and every such affidavit and affidavits as aforesaid, except where the person or persons, at the time of their acknowledging the fine, are in Ireland or some other parts beyond the seas, shall be made by some attorney or attornies of the Courts of WESTMINSTER HALL, or of the Great Sessions in Wales, or of the counties palatine of

*Chester, Lancaster, and Durham, (e)* and shall be sworn before a person duly authorized to take affidavits in this Court.

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M.

[*Trinity Term, 26 and 27 Geo. 2, 1752.*]

WHEREAS by a rule of this Court, made in Hilary Term, in the seventeenth year of the reign of his present Majesty, It was ordered that from and after the first day of the then next Michaelmas Term, instead of an oath made *viva voce*, of the due acknowledgment of fines, an affidavit or affidavits in writing on parchment should be made and annexed to every fine so taken as aforesaid, in which affidavit or affidavits the person or persons making the same should swear that he or they knew the party or parties acknowledging such fine; that the same was duly signed and acknowledged; that the party or parties acknowledging, and also the commissioners taking the same were all of full age and competent understanding; that the *feme covert*s (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same;

Further order as to what affidavits, of the due acknowledgment of fines taken before commissioners, are to contain.

(e) Attornies of the Great Sessions in Wales, and of the counties palatine, are incapacitated by Order Hilary Term 39 Geo. 3. See Append. *infra*, Q.

and that the cognizor or cognizors and every of them knew the same to be a fine to pass his, her, or their estate or estates ; which fine, together with such affidavit or affidavits annexed, should be transmitted to the Lord Chief Justice, or some other justice of this Court, for his *allocatur* thereon, and such affidavit or affidavits should remain annexed to such fine and be left with the same in the proper office ; which rule has been found by experience to have answered many, but not all the good purposes for which it was intended : to make, therefore, the same more effectual and complete, and the better to ascertain the practice for the future, It is ORDERED by the Court that from and after the first day of *Michaelmas* Term, in the affidavit or affidavits made in pursuance of such rule, the person or persons so making the same shall not only swear as they are directed by the said rule, but also that the fine was duly signed and acknowledged, upon the day and year, or days and years mentioned in the caption ; and if there be any rasure or interlineation in the body or caption of such fine, that such rasure or interlineation was made before the party or parties signed the said fine, and before the caption was signed by the commissioners ; which affidavit or affidavits shall be annexed to the fine, and shall be transmitted to the said Lord Chief Justice, or



some other justice of this Court, for his *allocatur* thereon ; and shall remain annexed to such fine, and be left with the same in the proper office, as is directed by the said rule.

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N.

[*Hilary Term, 14 Geo. 3. 1774.*]

For the more effectual and certain proof of the due acknowledgement of warrants of attorney, taken from the tenants or vouchées in common recoveries, by virtue of any writ of *dedimus potestatem*, It is ORDERED by the Court that from and after the first day of *Michaelmas* Term next, no common recovery, wherein the tenant or tenants, vouchee or vouchees, or any of them, shall appear and defend by attorney, shall be arraigned at bar, unless an affidavit or affidavits in writing on parchment shall be made and annexed to a copy of the *præcipe*, and warrant or warrants of attorney, acknowledged by such tenant or tenants, vouchee or vouchees, by virtue of any writ or writs of *dedimus potestatem* ; in which affidavit or affidavits, the person or persons making the same shall swear that he or they knew the party or parties acknowledging such warrant or warrants of attorney ; that the same was or were duly signed and acknowledged, upon the day and year, or

Recoveries.

What affidavits, of the acknowledgments of warrants of attorney, taken before commissioners under writs of *dedimus potestatem*, are to contain.

several days and years, mentioned in the caption or several captions thereof; that the party or parties acknowledging, and also the commissioners taking the same, were all of full age and competent understanding; that the *femes covert* (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same; that all the said parties knew the same warrant or warrants of attorney was or were intended for suffering a common recovery, to pass his, her, or their estate or estates; and further that the rasure or rasures, interlineation or interlineations (if any) in the body or caption of such original warrant or warrants of attorney, was or were made before the said parties or any of them signed the said warrant or warrants, and before the commissioners signed the said caption or captions; which affidavit or affidavits (together with the said copy of the *præcipe* and warrant or warrants of attorney, whereunto the same shall be annexed,) shall be filed in the office of enrolment of writs for fines and recoveries.

By whom  
affidavits  
are to be  
made.

AND IT IS ORDERED, that all and every such affidavit or affidavits, as aforesaid, shall be made by some attorney or attornies of the Courts of *Westminster Hall*, and shall be sworn before a person duly authorized to take affidavits in this

Court, except where the party or parties respectively, at the time of their acknowledging such warrant or warrants of attorney, shall be in that part of *Great Britain* called *Scotland*, or in *Ireland*, or in some other parts beyond the seas.

Where  
parties re-  
side in  
Scotland.

And in case the said party or parties shall be in *Scotland*, then the said affidavit or affidavits shall be made by one of the clerks to his Majesty's signet, and sworn before one of the judges, or other person duly authorized to take affidavits or depositions in the Court of Session or Court of Exchequer, in that part of the united kingdom. But if the said party or parties shall be in *Ireland* or in any other parts beyond the seas, then the said affidavit or affidavits shall be made by one of the commissioners, who hath taken the acknowledgment of such warrant or warrants of attorney, and shall be sworn either before some person duly authorized to take affidavits in this Court, or before some magistrate of the place where such acknowledgment shall be taken, having authority to administer an oath, and in the presence of a public notary, which notary shall also certify in writing under his hand and seal, as well the due administering of the said oath, as also the name, signature, and office of the magistrate administering the same.

In Ireland  
or other  
parts be-  
yond the  
seas.

## O.

[*Trinity Term, 30 Geo. 3, 1790.*]

Writ of *covenant* to be sued out before judge's *allocatur* signed.

IT IS ORDERED, that from and after the first day of *Michaelmas Term* next, every fine, at the time of signing the judge's *allocatur* thereon, shall have the writ of *covenant* sued out and annexed thereto.

And writ of *entry* where vouchee appears at bar.

AND IT IS ALSO ORDERED, that from and after the first day of *Michaelmas Term* next, every common recovery wherein the vouchee or vouchees shall personally appear at the bar of this Court, for the purpose of suffering such recovery, the writ of *entry* shall be sued out, and produced at the time of the recording of the vouchee or vouchee's appearance at bar, at the foot of the *præcipe* in such recovery.

Where warrant of attorney to suffer a recovery taken before commissioners, a judge's *allocatur* to be written on the copy of the *præcipe* and warrant.

AND IT IS FURTHER ORDERED, that from and after the first day of *Michaelmas Term* next, in every common recovery, wherein the tenant or tenants, or the vouchee or vouchees, warrant or warrants of attorney shall be taken under a *dedimus potestatem*, there shall be written on every copy of the *præcipe*, and of such warrant of attorney having such affidavit or affidavits, as is or are required by the rule (*f*) of this Court,

(*f*) The preceding Rule N.

made in *Hilary* Term, in the fourteenth year of the reign of his present Majesty, thereto annexed, the *allocatur* of the Lord Chief Justice; or some one other of the justices of this Court, in the same or like manner as *allocaturs* are now written on fines taken by *dedimus potestatem*; and the copy of the *præcipe* and warrant or warrants of attorney, with the *allocatur* thereon, shall be filed as directed by the said rule: and that, at the time of signing such *allocatur*, the writ of *entry* for such common recovery shall be produced before the judge signing such *allocatur*, who may mark such writ with his title, name, or initials thereof; and such writ shall also be produced at the time of the arraignment of such recovery.

The writ of *entry* to be produced to the judge at the same time to be marked by him.

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P.

[*Easter Term, 36 Geo. 3, 1796.*]

IT IS ORDERED, that from and after the last day of this present Term, no fines which shall appear to have been acknowledged more than twelve calendar months, shall be permitted to pass the *king's silver office*, without a rule of the Court, or an order under the hand of the Lord Chief Justice, or some other judge of this Court; and that where the cognizor or cognizors shall be all living at the time of making the appli-

Fines acknowledged more than 12 months not to pass *king's silver office* without a rule of Court, or judge's order.

**Affidavit.** cation for such rule or order, an affidavit shall be made thereof. And in case any or either of the cognizors of such fine should not then be living, an affidavit shall be made stating the time of the death of such cognizor or cognizors; and the application in such case for a rule or order, that the said fine may pass the *king's silver office*, shall be made to the Court by motion, if in term time, or if in vacation, to the Lord Chief Justice, or some other of the Justices of this Court, at his chambers; and that the rule or order in such last mentioned case, when obtained, shall be filed with the *præcipe and concord* of the fine, at the *king's silver office*.

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Q.

[*Michaelmas Term, 39 Geo. 3, 1798.*]

Fines and recoveries to be acknowledged before barristers of five years' standing, or attornies of one of the Courts at *Westminster* only.

WHEREAS the right honorable the Lord High Chancellor hath been pleased, by an order bearing date the twelfth day of July last, to direct that from and after that day, no writ of *dedimus potestatem* to be executed in England shall issue under the Great Seal, directed to any persons, except the judges, serjeants at law, barristers of five years' standing, or solicitors or attornies of some of the Courts in *Westminster Hall*, the judges of the *Court of Session* and

**Exchequer**, advocates and clerks to the signet of five years' standing in *Scotland*; **IT IS ORDERED** that from and after the last day of this term, no common recovery or fine shall be suffered to pass, unless the taking of the warrants of attorney, for suffering any common recovery or caption of any fine, be before one of the justices or barons of his Majesty's Courts of Record in *Westminster Hall*, or one of the serjeants at law; or unless an affidavit be made and filed, stating that the commissioners taking the same are, to the best of the deponent's information and belief, either barristers of five years' standing, or solicitors or attorneys of some of the Courts of *Westminster Hall*, the judges of the Court of Session and Exchequer, or advocates and clerks to the signet of five years' standing in *Scotland*. (g)

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R.

[*Trinity Term, 32 Geo. 3, June 12, 1812.*]

**IT IS ORDERED**, that from henceforth all fines shall be left at the office of the *chirographer* within *fourteen days* after the same shall have passed the *king's silver office*, and that all fines now remaining in the *king's silver office* shall

Fines to be left with chirographer within 14 days after they have passed king's silver office.

(g) See note (e), *ante*, p. 183.

be carried to the *chirographer's office* within two months from this day, and that a neglect to comply with this rule shall be deemed a contempt of this Court.

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S.

[*Hilary Term, 60 Geo. 3, and 1 Geo. 4.*]

No motion  
to be made  
respecting  
fines or re-  
coveries on  
the last day  
of term.

IT IS ORDERED by the Court, that from and after the last day of this present Hilary Term, no motion shall be made at the bar, on the last day of any term, touching the amendment of any fine, or any of the proceedings thereon.

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T.

[*Statute 23 Elizabeth, c. 3.*]

*An Act for the reformation of errors in Fines and Recoveries.*

“ For the appeasing of suits, the avoiding of  
“ false practices, deceits, devices, and misde-  
“ meanors, and for helping of negligences and  
“ misprisions of clerks and officers, dangerous to  
“ assurances of men's lands and hereditaments ;”  
be it enacted by the Queen's most excellent Ma-  
jesty our sovereign Lady, the Lords Spiritual and  
Temporal, and the Commons in this present Par-  
liament assembled, and by the authority of the  
same, That every writ of covenant and other writ

Inrolment  
of fines and  
recoveries.



whereupon any fine heretofore hath been levied, or hereafter shall be levied, the *return* thereof; the writ of *dedimus potestatem* made for the knowledging of any of the same fines, the *return* thereof, the *concord*, *note* and *foot* of every such fine, the *proclamations* made thereupon, and the *king's silver*, and also every original writ of *entry in the post*, or other writ, whereupon any common recovery hath been suffered or hereafter shall be suffered or passed, the writs of *summon. ad warrantizandum*, the *returns* of the said originals and writs of *summon. ad warrantizandum*, and every warrant of attorney had or to be had as well of every demandant and tenant as vouchee, extant and remaining, or that shall be extant and in being, may upon the request or election of any person be inrolled in rolls of parchment, by such persons, and for such considerations, as hereafter in this Act shall be mentioned; and that the enrolments of the same, or of any part thereof, shall be of as good force and validity in law, to all intents respects and purposes, for so much of any of them so enrolled, as the same being extant and remaining were or ought by law to be. Validity.

II. And be it further enacted by the authority aforesaid, That no fine, proclamations upon fines, or common recovery, heretofore had, For what errors, fines, &c. not reversible.

levied, suffered or passed, or hereafter to be had, levied, suffered or passed, shall be reversed or reversable by any writ of error, for false or incongruous *Latin*, rasure, interlining, misentering of any warrant of attorney, or of any proclamation, misreturning or not returning of the sheriff, or other want of form in words and not in matter of substance.

What persons may have, and in what cases, writs of error.

III. Provided always, That this Act, nor any thing therein contained, shall bar or exclude any person or persons from any writ of error which shall be had, taken or pursued, within five years next after the end of the Session of this present Parliament, upon any fine or recovery heretofore had or suffered, nor from any writ of error which shall be had, taken or pursued, upon any fine or recovery, heretofore levied, knowledged or had, which fine or fines, recovery or recoveries, or any part or parcel of them, or any of them, now is, or at any time before the first day of *June*, which shall be in the year 1582, shall be exemplified under the Great Seal of England, at and by the suit of any person that is or may be intituled to have or sue any writ of error, upon any the fines or recoveries heretofore passed ; nor to bar any *feme covert*, or any person within the age of one and twenty years, or any person that is *non compos mentis*, in prison or beyond the

seas, of or from any writ of error, to be had or prosecuted, for the reversing of any fine or recovery, heretofore passed levied or suffered, so that such *feme covert* or her heirs within seven years next after that she become sole, and such person within the age of one and twenty years, or his heirs within seven years next after he shall come and be of full age of one and twenty years, and such person that is *non compos mentis*, within seven years next after he shall become of sane memory, and in default thereof, the heirs of such person that is *non compos mentis*, within seven years next after the death of such person being *non compos mentis*; and such person in prison or his heirs, within seven years next after the same person shall be at liberty; and such person beyond the seas or his heirs, within seven years next after the return of such person into this realm of *England*, or the death of the said person, if he shall, before his return, die in any foreign country; shall sue, take and prosecute their writs of error, as their cases severally shall require, for reversing of any the said fines or recoveries heretofore passed levied or suffered.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons shall, within the time and years afore mentioned, commence or sue his or their writs

Ancestor  
dying  
pending  
suit.

of error for the reversing of any the said fines or recoveries heretofore passed, which suit shall fortune to abate by the death of any of the parties to the same, that then it shall and may be lawful for his and their heirs, at any time within one year next after the said seven years expired, to have sue and take their writ of error for the reversing of every such fine and recovery; and if such heir be an infant within the age of one and twenty years, then within one year next after the full age of such infant; any thing in this present Act contained to the contrary thereof in anywise notwithstanding.

Day and  
year cer-  
tified of  
acknow-  
ledgment  
of fine, &c.

V. And be it further enacted by the authority of this present Parliament, That every person that shall at any time hereafter take the knowledge of any fine or warrant of attorney of any tenant or vouchee for suffering of any common recovery, or shall certify them or any of them, shall, with the certificate of the concord or warrant of attorney, certify also the day and year wherein the same was knowledged; and that no person that taketh any such knowledge of any fine, or warrant for any recovery, shall be bounden, or by any means enforced to certify any such knowledge or warrant, except it be within one year next after the said knowledge taken; and that no clerk or officer shall receive any writ of covenant or writ of entry, where-

upon any fine or common recovery is hereafter to pass, unless the day of the knowledge of the same fine and warrant shall appear in or by such certificate; upon pain that every clerk that shall receive any such writ shall forfeit for every time that he shall so offend the sum of five pounds; and that no attornment in or upon any fine be entered upon record, except the party mentioned to attorn therein first have appeared in the Court, in person or by attorney, warranted by the hand of one of the justices of the one bench or the other, or of one justice of assize, upon a writ of *quid juris clamat, quem redditum reddit*, or *per quæ servitia*, as the case requireth; and that every entry of attornment hereafter to be made, where there shall be no appearance as afore is said, shall be utterly void and of none effect, without any writ of error or other means to be used for the avoiding thereof.

VI. And be it further enacted by the authority aforesaid, that there shall be for ever one office for the enrolment aforesaid, which shall be and continue an office for ever, called the Office of Enrolment of Writs for fines and recoveries, and that the justices of the Common Pleas for the time being, (other than the Chief Justice) shall have and take the care and charge of and for the enrolments aforesaid, and shall have and enjoy the said office and disposition thereof, and

Officer of  
enrolments  
of writs for  
fines and  
recoveries.

carefully see and look to the execution thereof ; and in consideration of their charges, pain, and trouble therein, shall have and take the sums of money hereafter following, and no more ; that is to say, for the enrolment and examination of every fine and the parts thereof, before mentioned, the sum of six shillings and eight pence ; and for the enrolment of the said parts of every recovery and the examination thereof, six shillings and eight pence ; and for every exemplification of the enrolment of any fine, five shillings ; and for the exemplification and returns of every writ of entry, *summon. ad warrantizand.* and warrants, five shillings ; and for the search of the rolls of one year, four pence ; and for the copy of one sheet of paper containing fourteen lines, four pence ; and that the said justices, or one of them, shall examine the enrolments of every such fine and parts of recoveries ; and forthwith after examination thereof, and immediately after the enrolment of every such fine and parts of recoveries, write his name that so examineth, with his own hand in the roll thereof, upon pain that the said justices shall forfeit to our sovereign Lady, the Queen's Majesty, the sum of five pounds for every time that they, or some or one of them, shall make default of such examination or writing of his or their name as afore is said ; and that it shall and may be law-

Justices  
may assess  
fines.

ful to and for the justices of the said Court of Common Pleas from time to time to take order in all things that shall be convenient and needful for the enrolments aforesaid, and upon examination in the said Court to assess such fine or amerciamment upon any clerk, sheriff, deputy, attorney, and other person, for his and their misprision, contempt, and negligence, for not doing or misdoing in any thing, of, in, or concerning the said fines and recoveries, or any part of them, or either of them, as by the said justices of the said Court of Common Pleas for the time being shall be thought meet and convenient; the said fine and amerciamment to be estreated amongst other fines and amerciamentes of that Court when such offence or misprision shall be committed.

VII. And be it further enacted by the authority of this present Parliament, That the *chirographer* of fines of the Common Pleas for the time being for ever, shall write and make, or cause to be written and made for every county where her Majesty's writ runneth, one table, wherein shall be contained such contents of every fine that shall pass in any one term, as hereafter is mentioned, that is to say, the name of the county wherein the tenements mentioned in any fine be, the name of every plaintiff and deforciant, and of every manor named in the fine,

Table of  
fines in  
Common  
Pleas and  
at assizes.

if any such be, and of the towns and places where the tenements in such fine comprised do lie ; and the first day of the next term after the engrossing of every such fine shall fix every of the said tables upon some open place in the Court of Common Pleas, and so every day of the said term during the time of sitting of the said Court ; and that the said chirographer shall deliver to every sheriff of every county, his under-sheriff or deputy, fair written in parchment, a perfect content of the Table so to be made for that shire in the term that shall next before the assizes be holden in the said county, or else meane between that term and the said assizes ; and that every such sheriff to whom such parchments, with the contents aforesaid, shall be delivered, the first day of the next assizes after the delivery thereof unto him, and every day during the said assizes, shall fix and set up the same writing undefaced, in some open place in the Court where the justices of the assize of that county shall sit, and shall see the same to continue there during such time as the said justices shall sit there in Court, upon pain that every chirographer and sheriff offending against any thing in this Act contained, shall forfeit to our sovereign Lady the Queen's Majesty the sum of five pounds, the one moiety whereof shall be to the Queen's Majesty, her heirs and successors,

Penalty.



and the other moiety to him or them that will sue for the same in any court of record, wherein no essoin, protection, or wager of law, shall be allowed; and that the chirographer for the time being shall have and take for every such content of every fine so set down in the table aforesaid four pence.

Chirographer's fee.

VIII. This clause relates exclusively to the Earl of Kent's title, saving to him a right to bring any writ of error to reverse divers fines and recoveries suffered as therein mentioned.

IX. Provided always, and be it enacted by the authority aforesaid, that it shall be lawful for the justices' clerks, authorized by their warrant, in the said several offices and places where the same records, or any of them, do or shall remain, to write out or enrol the same records and every part thereof, without any thing to be paid therefore; and that the said records, nor any of them, for the writing out or making the rolls thereof by the clerks of the said justices, otherwise than for the examination thereof by the justices, shall be brought or carried forth of the said offices or places.

Record not to be carried forth of office.

X. And be it further enacted by the authority aforesaid, That none of the fines or recoveries heretofore levied, passed, or suffered, which shall be exemplified under the Great Seal, according to the form of this Act, shall, after such exemplification had, be in anywise amended.

Amendment of fines, &c.

## U.

14 Geo. 2. c. 20.

*An Act to amend the law concerning common recoveries, &c.*

“ Whereas several leases have been here-  
“ tofore and are hereafter likely to be made,  
“ of honours, castles, manors, lands, tenements,  
“ and hereditaments, for one or more life or  
“ lives, under particular rents thereby reserved,  
“ and to be reserved: And whereas procuring  
“ surrenders of such freehold leases, or the  
“ tenants thereof to join, in order to make  
“ tenants to the writs of entry, or other writs  
“ for suffering common recoveries, frequently  
“ occasions great trouble difficulty and expense  
“ to tenants in tail, and the same cannot in  
“ many cases be obtained by reason of the un-  
“ certainty in whom the legal estate of freehold  
“ under such leases is vested, and also by reason  
“ of the disabilities and incapacities of such  
“ lessees or persons claiming under them, by  
“ means whereof purchases and family settle-  
“ ments are often delayed, and may be in great  
“ danger of being defeated if some proper re-  
“ medy be not provided :” for remedy whereof  
be it enacted by the King’s most excellent Ma-  
jesty, by and with the advice and consent of the  
Lords Spiritual and Temporal and Commons, in

this present Parliament assembled, and by the authority of the same, That all common recoveries suffered or to be suffered in his Majesty's Court of Common Pleas at *Westminster*, or in any other court of record in the principality of *Wales*, or in any of the counties palatine, or in any other court having jurisdiction of the same, of any honours, castles, manors, lands, tenements or hereditaments, without any surrender or surrenders of such lease or leases, or without the concurrence or any conveyance or assurance from such lessee or lessees, or other person or persons claiming under such lessee or lessees, in order to make good tenants to the writs of entry, or other writs whereupon such recoveries have been or shall be had or suffered, shall be as valid and effectual in law, to all intents and purposes whatsoever, as if such lessee or lessees, or any other person or persons claiming under him, her, or them had conveyed or joined in conveying, or shall convey or join in conveying a good estate of freehold to such person or persons as has or have been, or shall become, tenant or tenants to such writs of entry, or other writs, whereupon such common recoveries have been or shall be suffered.

Common recoveries to be valid without surrender of freehold leases.

II. Provided always, that nothing in this act contained shall extend or be construed to extend, to make any common recoveries valid and

But the tenant for life or other greater estate next

inreversion  
to join in  
making  
the tenant  
to the *prae-*  
*cipe*.

effectual in law, unless the person or persons entitled to the first estate for life, or other greater estate (in case there be no such estate for life in being) in reversion or remainder next after the expiration of such leases, has or have by some lawful act or means conveyed or assured, or joined in conveying or assuring, or shall by some lawful act or means convey or assure, or join in conveying or assuring, an estate for life at the least, to such person or persons as has or have been, or shall become tenant or tenants to the writs of entry, or other writs whereupon such common recoveries have been or shall be suffered.

Lessee's  
estate not  
to be pre-  
judiced by  
the act.

III. Provided also, that nothing in this act contained shall be construed to extend to prejudice the estate of such lessee or lessees, or any person or persons claiming any interest under such lessee or lessees.

Evidence  
of common  
recoveries.

IV. " And whereas by the default or neglect of persons employed in suffering *common recoveries*, it has happened, and may happen, that such recoveries are not entered on record, whereby purchasers for a valuable consideration may be defeated of their just rights." For remedy thereof, be it further enacted by the authority aforesaid, that where any person or persons hath or have purchased, or shall purchase for a valuable consideration, any estate

or estates in lands, tenements, or hereditaments, whereof a recovery or recoveries is, are, or were necessary to be suffered in order to complete the title, such person and persons, and all claiming under him, her, or them, having been in possession of the purchased estate or estates, from the time of such purchase, shall and may after the end of twenty years from the time of such purchase produce in evidence the deed or deeds, making a tenant to the writ or writs of entry, or other writs for suffering a common recovery or recoveries; and declaring the uses of a recovery or recoveries, and the deed or deeds so produced (the execution thereof being duly proved) shall in all Courts of law and equity be deemed and taken as a good and sufficient evidence for such purchaser and purchasers, and those claiming under him, her, or them, that such recovery or recoveries, was or were duly suffered and perfected according to the purport of such deed or deeds, in case no record can be found of such recovery or recoveries, or the same should appear not to be regularly entered on record : provided always that the person or persons making such deed or deeds as aforesaid, and declaring the uses of a common recovery or recoveries, had a sufficient estate and power to make a tenant to such writ or writs as aforesaid, and to suffer such common recovery or recoveries.

V. “ And whereas it has frequently happened, that the deeds for making the tenants to the writs of entry, or other writs for suffering common recoveries, have been lost, or that the fines or deeds, making the tenants to the said writs, have not been leyed or executed till after the judgment given in such recoveries, and the writ of seisin awarded, by reason whereof great doubts have arisen, whether such recoveries, for want of proper tenants to the writs, are good and effectual in law.” To prevent such doubts for the future, and in order to render common recoveries more certain and effectual, be it enacted by the authority aforesaid, that every common recovery already suffered, or hereafter to be suffered, shall, after the expiration of twenty years from the time of the suffering thereof be deemed good and valid to all intents and purposes, if it appears upon the face of such recovery that there was a tenant to the writ; and if the persons joining in such recovery had a sufficient estate and power to suffer the same, notwithstanding the deed or deeds for making the tenant to such writ should be lost or not appear.

Common recoveries of twenty years valid.

Recovery good, though deed executed after the time.

VI. And be it further enacted by the authority aforesaid, that from and after the commencement of this act every recovery already suffered, or hereafter to be suffered, shall be deemed good and valid to all intents and purposes, not-

withstanding the fine or deed or deeds making the tenant to such writ should be levied or executed after the time of the judgment given in such recovery, and the award of the writ of seisin as aforesaid, provided the same appear to be levied or executed, before the end of the term, great Session, Session or Assizes in which such recovery was suffered, and the persons joining in such had a sufficient estate and power to suffer the same as aforesaid.

VII. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to make any such common recovery heretofore suffered valid and effectual in law, which has been avoided by any lawful act or means, or which shall hereafter be avoided by entry duly made on or before the sixteenth day of *January*, 1740, or by judgment or decree had or obtained upon some action or suit at law, or in equity, commenced or to be commenced on or before the said eighteenth day of *January*, and prosecuted with due diligence; but every such common recovery shall remain and be of such force and effect only, as the same would have been if this Act had never been made, and of no other force or effect.

VIII. Provided that nothing in this Act contained shall be construed to prejudice or affect any question of law, which may arise upon

What recoveries not valid.

No question of law arising upon any recovery to

be prej-  
diced by  
this Act.

common recoveries not remedied or intended to be remedied by this Act; but all such common recoveries shall remain and be of such force and effect, as the same would have been if this Act had never been made, and of no other force or effect.

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V.

32 Geo. 2. c. 14.

*An Act for the more regular and easy collecting, &c. of postfines which shall be due to the Crown or to the grantees thereof under the Crown; and for the case of Sheriffs in respect to the same.*

“ WHEREAS great trouble and expense arise  
“ in the execution of the office of Sheriff, by  
“ the present method of collecting, accounting  
“ for, and paying of *postfines*, which become  
“ due to the Crown, or to grantees or proprie-  
“ tors thereof under the Crown, by reason that  
“ the persons from whom such *postfines* are due,  
“ are frequently unknown to the Sheriff, and  
“ resident out of his county; and the parishes,  
“ towns, precincts or places, in which the lands  
“ lie, whereof the fine was levied, are frequently  
“ misnamed, whereby the Sheriff is unable to  
“ find out the same: And forasmuch as the  
“ Sheriff of every county, on the passing his  
“ accounts, is obliged to pay to the Crown,



“ before he can obtain his *quictus*, the several  
 “ and respective *postfines* charged upon him;  
 “ many of which he is never able to collect in  
 “ and receive, to his manifest loss and detri-  
 “ ment;” for remedy whereof, and for the ease  
 of Sheriffs in the execution of their office, may  
 it please your Majesty that it may be enacted;  
 and be it enacted by the King’s most excellent  
 Majesty, by and with the advice and consent of  
 the Lords’ Spiritual and Temporal, and Com-  
 mons in this present Parliament assembled, and  
 by the authority of the same, That on all and  
 every writ or writs of covenant which, from and  
 after the first day of *Trinity Term*, 1759, shall  
 be sued out for the passing of fines in his Ma-  
 jesty’s Court of *Common Pleas* at *Westminster*,  
 the officer or officers, whose duty it is to set and  
 indorse the *prefine* payable thereon, shall also  
 at the same time set the usual *postfine*, and  
 indorse the same on the back of the said writ  
 or writs, together with his or their name or  
 names, or mark of office thereto, in the like  
 manner as the same are now indorsed or stamped  
 at the *king’s silver office*; which said *postfine*  
 or *postfines* shall be forthwith paid to the re-  
 ceiver of *prefines* at the *alienation office*, for the  
 time being, together with the sum of fourpence  
 as his fee for receiving the same, instead and in  
 lieu of the fee of fourpence charged on lands;

The *post-  
fine* to be  
 set and in-  
 dorsed at  
 the same  
 time that  
 the *prefine*  
 is, and to  
 be paid at  
 the *aliena-  
tion office*.

tenements, and hereditaments, and payable to sheriffs bailiffs and others on discharging the same, by virtue of the Act of the third year of his late Majesty King George the First, intituled *An Act for the better regulating the office of sheriffs; and for ascertaining their fees, and the fees for suing out their patents and passing their accounts*; which said fee of fourpence by the said Act granted, from and after the said first day of *Trinity Term*, 1759, shall cease and determine; and such receiver shall indorse upon the back of every such writ or writs of covenant one particular or certain mark of office, in like manner as is now used by him on the receipt of *prefines* at the *alienation office*, together with the name of such receiver, and the sum of money which shall be by him received as the *postfine* due thereon; which mark and indorsement of such receiver shall discharge the manors, lands, tenements, rents, commons and hereditaments comprised in the said writ or writs of covenant, and the cognizee or cognizees named therein.

Clerk of  
the king's  
silver office  
to enter  
and mark  
fines.

II. And be it further enacted by the authority aforesaid, That the officer or clerk of the *king's silver office*, or his deputy, from and after the said first day of *Trinity Term*, 1759, shall continue to enter every such fine or fines upon record in the way hitherto used in the passing of fines, and make thereof the same entries, and

shall put thereon the same indorsements, with the same stamp or mark, and in the like manner, as has hitherto been the constant usage and practice of the said office in passing of fines; and that no fine, until the same shall be stamped and marked with the sum to which the *postfine* amounts as aforesaid in the said *king's silver office*, shall be deemed a fine valid and effectual in law.

No fine  
valid until  
so marked.

III. " And whereas no *prefine* is payable on  
" any writ of covenant where the lands and  
" tenements contained therein are under the  
" yearly value of five marks; but a certain sum  
" of six shillings and eightpence hath been an-  
" ciently set and payable to the Crown on every  
" such writ of covenant, as and for the king's  
" licence being granted to the parties in such  
" writ of covenant named to accord;" Be it  
therefore further enacted by the authority afore-  
said, That from and after the said first day of *Trinity* Term, in all cases where no *prefine* shall be payable on any writ of covenant, the officer or officers at the said *alienation office*, whose duty it is to set and indorse the *prefine* on every writ of covenant, on which a *prefine* is payable, shall set on every writ of covenant, brought to the said *alienation office*, on which no *prefine* shall be payable, a *postfine* of six shillings and eightpence, as hath been anciently

Where no  
*prefine* pay-  
able, then  
*postfine* of  
6s. 8d. to be  
indorsed at  
alienation  
office on  
writ, and  
paid to the  
receiver  
there be-  
fore the  
writ is  
passed.

Receiver to  
indorse and  
mark writ.

usually put, at the said *king's silver office*, on every writ of covenant on which no *prefine* was payable; and shall indorse such *postfine* of six shillings and eightpence on every such writ of covenant, together with his or their name or names, and mark of office, in the like manner as it hath been usual to indorse such writs of covenant at the said *alienation office*; and every such *postfine* of six shillings and eightpence shall be paid to the said receiver of the said *alienation office*, before the writ of covenant on which no *prefine* is payable shall be passed at the said *alienation office*; and the said receiver on payment of the said six shillings and eightpence, shall indorse on and mark every such writ of covenant, in like manner as other writs of covenant are by this Act before directed to be indorsed and marked by such said receiver.

Clerk to  
receive no  
writ where  
*postfine* not  
paid.

IV. And be it further enacted by the authority aforesaid, That the officer or clerk of the *king's silver office*, or his deputy, from and after the said first day of *Trinity Term*, 1759, shall not receive any writ or writs of covenant, unless it shall appear by the mark and indorsement of such receiver as aforesaid, that the *postfine* has been paid thereon.

In what  
case.

V. Provided nevertheless, That if after the payment of such *postfine* or *postfines* as aforesaid, the said writ or writs of covenant shall by

the death of any of the parties named therein, or for any other cause whatsoever, be prevented or hindered from passing through the several other offices, so as the said fine or fines is or are not or cannot be completed; that then and in every such case, the said receiver shall repay to the cognizee or cognizees, in every such writ or writs of covenant, his, her or their attorney or agent on their producing and filing with him, the said writ or writs of covenant, all and every such sum and sums of money, as shall have been before by him received thereon, as and for the *postfine* or *postfines*; and such writ or writs of covenant so remaining filed with such receiver shall be and is hereby declared to be a sufficient discharge to such receiver, for such sum or sums of money as he shall so repay as aforesaid.

Receiver to  
repay *post-*  
*fine*.

VI. This clause relates solely to the mode in which the receiver is to enter into recognizance for the faithful execution of his office.

Receiver to  
enter into  
recogniz-  
ance, &c.

VII. And be it further enacted by the authority aforesaid, That from and after the said first day of *Trinity* Term, every such receiver, his clerk or agent, shall daily (*Sunday* and holidays excepted) attend at the said *alienation office* from nine of the clock in the morning, till one of the clock in the afternoon, and shall deliver back every such writ of covenant as aforesaid, when the same shall be called for at the said *alienation*

Hours of  
receiver's  
attendance,  
&c.

*office*, during the office hours hereinbefore appointed for such receiver's attendance at the said office, within two days after every such *postfine* shall be paid thereon respectively, unless the last of the said two days shall happen to be a *Sunday* or holiday, and then on the next succeeding day.

VIII. Directs to whom the receiver is to pay the fines, &c.

IX. Makes forging of receiver's hand or mark felony without benefit of clergy.

X. Receiver to be subject to the order of the Court of Exchequer.

Proviso for  
operation  
of fines in  
C. P.

XI. Provided always, and be it enacted by the authority aforesaid, That this Act shall not any way alter the operation of any fine which after the said first day of *Trinity Term*, 1759, shall be levied in the *Court of Common Pleas* at *Westminster*, or the course of passing fines in that Court, otherwise than in and by this Act directed.

XII. Act to be deemed public.

## PRECEDENTS

IN

## FINES AND RECOVERIES.

## I.

*Deed of Covenant from a Tenant in tail to levy a Fine  
SUR COGNIZANCE DE DROIT COME CEO, &c. to the use  
of himself.*

THIS INDENTURE made &c., BETWEEN A. B. Esq. only Parties.  
son and heir apparent of C. B. Esq., by D. his late wife  
deceased, of the one part, and E. F. Esq., of the other  
part, WITNESSETH that the said A. B., for the docking Considera-  
and barring of all estates tail heretofore limited or made tion.  
of the manors, tenements, and hereditaments hereinafter  
mentioned, or any of them, and for vesting in himself  
an absolute estate of inheritance in fee simple, in all  
the same hereditaments and premises, for divers good  
causes and considerations him hereunto moving, doth Covenant.  
hereby for himself and his heirs covenant and agree with  
the said E. F. and his heirs that he the said A. B. shall  
and will, at his own proper costs and charges before the  
end of *Easter Term* now next ensuing, in due form of  
law acknowledge and levy in his Majesty's Court of  
Common Pleas at Westminster before his Majesty's  
Justices of the same Court, one fine SUR COGNIZANCE  
DE DROIT COME CEO, &c. unto the said E. F. and his  
heirs, of ALL those, the manors, &c., of him the said

se. A. B., and wherein he hath any estate or interest, situate, lying, and being in, &c., by such names and descriptions as shall be thought fit and requisite to describe and ascertain the same. (a) Which said fine so as aforesaid, or in any other manner, to be levied, and also all and every other fine and fines heretofore or hereafter to be levied by the said A. B. of the said hereditaments and premises above mentioned, or any of them, shall be and enure, and shall be construed, deemed, and taken to be and enure, and is and are hereby declared to be, and enure, to and for the only proper use and behoof of the said A. B., his heirs and assigns for ever, and to and for no other use whatsoever.

IN WITNESS, &c.

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-II.

*Deed of Covenant from Vendors, a man and his wife, to levy a Fine SUB COGNIZANCE DE DROIT COME CEO, &c. to the use of a purchaser.*

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., *yeoman*, and C. his wife, heretofore C. D., *spinster*, (daughter, and also devisee in fee, named in the last will and testament of E. D., formerly of, &c. *yeoman*, deceased) of the one part, and F. G., of, &c., Esq. of the other part. WHEREAS the said A. B., and C. his wife, have contracted and agreed with the said F. G., for the absolute sale to him of the fee-simple and inhe-

Recital.

(a) As to describing the situations, &c. of the parcels, as well in the deed as in the fine, see p. 61—64, *ante*, and the various notes on the subject in this Appendix.



N  
 riance, in possession, free from Incumbrances, of all that piece of arable, meadow, pasture, or wood land, containing by estimation, &c., situate, lying, and being in the parish of, &c. formerly in the possession of, &c. and now in the possession of the said A. B., and C. his wife, together with all trees, wood, underwood, hedges, ditches, ways, paths, passages, waters, water-courses, commons, common of pasture, privileges, easements, advantages, emoluments, rights, members, and appurtenances whatsoever, to the said piece or parcel of land and hereditaments belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part thereof; and all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law and in equity, of them the said A. B., and C. his wife, and of each of them, in, to, or out of the same, and every part thereof; and for that purpose to levy a fine of the said piece or parcel of land, as hereinafter mentioned. Now THIS INDENTURE WITNESSETH, that in consideration of the sum of, &c., at or before the sealing and delivery of these presents to the said A. B., well and truly paid by the said F. G., (the receipt whereof he the said A. B. doth hereby acknowledge, and thereof and therefrom doth hereby release, acquit, and discharge the said F. G., his heirs, executors, and administrators, and every of them, by these presents) he the said A. B., for himself, his heirs, executors, and administrators, and for the said C. his wife, and her heirs, doth covenant and agree with the said F. G., his heirs and assigns, that they the said A. B., and C. his wife, or her heirs, shall and will, at the proper costs and charges of the said F. G., as of this present *Trinity* Term, or of some subsequent Term, in due form of law, acknowledge and levy before his Majesty's Justices of the Court of Common Pleas at

Consideration.

Covenant.

Westminster, unto the said F. G. and his heirs, one or more fine or fines **SUR COGNIZANCE DE DROIT COME CEO, &c.**, with proclamations thereon, according to the form of the statute in that case made and provided, and the usual course of fines in such cases accustomed, of ALL and singular the said piece or parcel of land and hereditaments hereinbefore mentioned and described, with the appurtenances, by such apt and convenient names, quantities, qualities, and descriptions as shall be sufficient to comprise the same. **AND** it is hereby declared and agreed, by and between all the said parties hereto, that the fine or fines so as aforesaid, or in any other manner to be levied in virtue of these presents, as also from and after the perfecting thereof, all and every other fine and fines, common recovery and recoveries, conveyances and assurances in the law whatsoever, heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of the said piece or parcel of land and hereditaments, or any part thereof, by or between the said parties to these presents, or any of them, or whereunto they, or any of them are, is, or shall be parties or party, privies or privy, shall be and enure, and shall be adjudged, deemed, construed, and taken to be and enure **TO THE USE** and behoof of the said F. G., his heirs and assigns, for ever, and to, upon, and for no other use, trust, intent, or purpose whatsoever. **AND** the said A. B. for himself, his heirs, executors, and administrators, and for the said C. his wife, and her heirs, doth hereby covenant and grant to and with the said F. G. and his heirs, that they the said A. B., and C. his wife, and her heirs, will for ever warrant the same piece or parcel of land and hereditaments hereinbefore expressed, to be hereby granted, with the appurtenances, unto the said F. G., his heirs and assigns, against all mankind. **IN WITNESS, &c.**

Use.

Warranty.

## III.

*Covenant to levy a Fine sur COGNIZANCE DE DROIT COME CEO, &c. to the use of the cognizee for a term of years, and then to the cognizor in fee.*

AND, for the effectual barring of all estates tail, of and in the messuage or tenement, farms, land, grounds, hereditaments, and premises mentioned to be hereby demised, and for the better assuring the same to the several uses hereinafter mentioned and declared concerning the same, the said A. B., for himself and his heirs, doth covenant, promise, and agree, to and with the said C. D., his heirs, executors, administrators, and assigns, by these presents, that he, the said A. B., or his heirs, shall and will, before the end of *Easter Term* next ensuing, or some other subsequent term, at the request of the said C. D., his executors, administrators, or assigns, but at the costs and charges of the said A. B., acknowledge and levy, in due form of law, before the Justices of his Majesty's Court of Common Pleas at Westminster, one or more fine or fines, *SUR COGNIZANCE DE DROIT COME CEO, &c.* to be engrossed, recorded, and sued forth with proclamations, according to the statute in such case made and provided, and the common course of fines with proclamations in such cases used unto the said C. D., and his heirs; of all that messuage or tenement, farm, lands, grounds, hereditaments, and premises, mentioned to be hereby demised, with their and every of their appurtenances, by such apt and convenient name and names, number of

messuages and acres, quantities, qualities of land, and other descriptions, as will effectually comprise the same and shall for that purpose, be thought fit and requisite: AND it is hereby declared and agreed to be the true intent and meaning of these presents, and of the parties hereunto, that as well the said fine or fines hereinbefore covenanted to be acknowledged and levied as aforesaid, or in any other manner to be acknowledged or levied, as also from and after the perfecting thereof, all and every other fine and fines, recovery and recoveries, conveyances and assurances in the law whatsoever already had, made, done, acknowledged, levied, suffered, or executed, of the aforesaid messuage or tenement, farm, lands, grounds, hereditaments and premises, or any of them, or any part or parcel thereof, by or between the said parties to these presents, or either of them, or whereunto they or either of them are, is, shall or may be parties or party; shall be and enure, and shall be adjudged, deemed, construed, and taken to be and enure, to the use and behoof of the said C. D., his executors, administrators, and assigns, for and during the term of one thousand years, mentioned to be hereby demised and granted as aforesaid, and for the confirmation and corroboration of the same term, and from and after the expiration, or other sooner determination of the same term, and in the mean time subject thereto, to the use and behoof of the said A. B., his heirs and assigns, for ever, and to and for no other use, intent, or purpose, whatsoever. (b)

(b) This covenant was inserted in a mortgage by demise.

## IV.

*Covenant to levy a Fine SUR COGNIZANCE DE DROIT TANTUM, to the use of the COGNIZER.*

AND for the barring and destroying all estates tail, and other estates, and all remainders or reversions thereon expectant or depending, of and in the said manors, &c., hereinbefore granted and released, or expressed and intended so to be; and for the further, better, and more effectual granting, conveying, and assuring the same unto and to the use of the said C. D., his heirs and assigns for ever, in remainder or reversion, expectant on the decease of the said E. F., as aforesaid, and in manner aforesaid, and according to the true intent and meaning of these presents; the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said C. D., his heirs and assigns, that he, the said A. B., shall and will, at the proper costs and charges in the law, of him the said A. B., his heirs, executors, or administrators, as of *Hilary* Term now last past, or before the end of *Trinity* Term now next ensuing, or of some other subsequent term, acknowledge and levy, before his Majesty's Justices of the Court of Common Pleas at Westminster, one or more fine or fines, SUR COGNIZANCE DE DROIT TANTUM, according to the usual course of fines in such cases used, unto the said C. D., and his heirs, of the said manors, or reputed manors, messuages, lands, tenements, hereditaments, and premises hereby granted and released, or expressed and intended so to be, with

their appurtenances, by such apt and convenient names, quantities, qualities, number of acres, and other descriptions to comprise the same, as shall be thought meet: WHICH said fine or fines, so as aforesaid, or in any other manner, or at any other time or times, levied or to be levied or acknowledged, and all and every other fine and fines, common recovery and recoveries, conveyances and assurances in the law whatsoever already had, made, done, levied, suffered, or executed of the same, by or between the said parties, or whereunto they are, is, shall, or may be parties or privies, or party or privy, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended to be and enure, and are hereby declared by the said parties to these presents, to be and enure to the only proper use and behoof of the said C. D., his heirs and assigns for ever, in remainder or reversion, immediately expectant on the decease of the said E. F.; and in the mean time subject to her life-estate or interest therein.

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V.

*Declaration of the Use of a Fine SUR COGNIZANCE DE DROIT COME CEO, &c. to the use of the cognizee.*

AND WHEREAS the said A. B. did, in *Trinity* Term last, acknowledge and levy before his Majesty's justices of the Court of Common Pleas at Westminster, unto the said C. D., one fine SUR COGNIZANCE DE DROIT COME CEO, &c. of all and singular the said manors, hereditaments, and premises hereinbefore mentioned and described, and granted, and conveyed, or intended so to be, with the usual proclamations according to the

form prescribed by the statute made for that purpose :  
 NOW THIS INDENTURE FURTHER WITNESSETH, and the  
 said A. B. doth hereby declare that the said fine so  
 levied, and all and every other fine and fines heretofore  
 levied of the said manors, hereditaments, and premises,  
 or any part thereof, shall be and enure, and is and are  
 hereby expressly declared to be and enure unto, and to  
 the use of the said C. D., his heirs and assigns for  
 ever, (c)

## VI.

*Bargain and Sale for the joint lives of the bargainor  
 and bargainee of manors, &c., for a recovery, with  
 double voucher, to the use of the bargainor.*

THIS INDENTURE OF THREE PARTS, made, &c. BE-  
 TWEEN A. B., (d) of, &c., Esq., of the first part, Parties.  
 C. D., (e) of, &c., Gent. of the second part, and  
 E. F., (f) of, &c., Gent., of the third part. WHEREAS, Recital.  
 under and by virtue of the last will and testament of  
 B. B., Esq., deceased, his late father, bearing date on  
 or about, &c., and certain codicils thereto annexed,  
 all proved in the Prerogative Court of the Arch-  
 bishop of Canterbury, on or about &c. or some, or  
 one of them, the said A. B. is seised of an estate  
 tail in possession of the manors, messuages, farms,  
 lands, tenements, and hereditaments, hereinafter bar-  
 gained and sold, or otherwise assured, or intended so  
 to be, with their rights, members and appurtenances.  
 NOW THIS INDENTURE WITNESSETH, that, for docking, Considera-  
tion.

- (c) As to the nature and effect  
 of declarations of the uses of  
 fines, see p. 64—69, *ante*.  
 (d) The tenant in tail, and

- vouchee in the recovery.  
 (e) The tenant in the recovery.  
 (f) The demandant in the re-  
 covery.

Bargain,  
&c.

Parcels.

barring, and destroying all estates tail of and in the manors, messuages, farms, lands, tenements, and hereditaments, hereinafter bargained and sold, or otherwise assured, or intended so to be, and all reversions or remainders, expectant or depending on the same estates tail, and for settling and assuring the same manors, messuages, farms, lands, tenements, and hereditaments, to the use of the said A. B., his heirs and assigns for ever, and in consideration of ten shillings, of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain, to the said A. B., well and truly paid by the said C. D., immediately before the execution of these presents, the receipt whereof is hereby acknowledged; he, the said A. B., **HATH** bargained and sold, and by these presents **DOTH** bargain and sell unto the said C. D. **ALL** and singular the manors, messuages, farms, lands, tenements, and hereditaments, situate, lying, and being in the towns, places, or parishes of G, H, I, K, L, and M, in the said county of N, or any of them of which the said A. B. is tenant for an estate tail, either at law or in equity, under or by virtue or means of the last will and testament of the said B. B., his deceased father, or any codicil, or codicils thereto, or under or by virtue or means of any other will, deed, or settlement whatsoever, and every part and parcel of the same; and all and singular messuages, farms, cottages, houses, outhouses, [*&c. the general words*] hereditaments, and appurtenances whatsoever to the said manors, messuages, farms, lands, tenements and hereditaments, respectively hereby bargained and sold, or otherwise assured, or intended so to be, or any of them respectively, now demised, leased, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member of them, or any of them, or appurtenant



thereunto, with their and every of their appurtenances; and the reversion and reversions, remainder and remainders, yearly, and other rents and profits of the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. To HAVE AND TO HOLD the said manors, messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby bargained and sold, or otherwise assured or intended so to be, and every part and parcel of the same with their and every of their rights, members, and appurtenances, unto and to the use of the said C. D., and his assigns, for and during the joint natural lives of the said A. B. and C. D.: TO THE INTENT, that the said C. D. may be tenant of the freehold of all and singular the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, to the end that one or more good and perfect common recovery, or recoveries, with double voucher, may be had and suffered, of the same lands and hereditaments. AND, for that purpose, it is hereby directed, declared, and agreed, by and between all the said parties to these presents, that the said A. B. shall permit and suffer the said E. F., or some other person or persons, at the costs and charges, in all things, of the said A. B., his heirs, executors, or administrators, at any time or times hereafter, to sue forth and prosecute against him the said C. D., out of His Majesty's High Court of Chancery, one or more writ or writs of entry *SUR DISSEISIN EN LE POST*, returnable before His Majesty's Justices of the Court of Common Pleas at

Haben-  
dum.

Intent.

Westminster, and thereby demand of the said C. D., the manors, messuages, farms, lands, tenements, hereditaments, and premises, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances by such apt, good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions, as shall be deemed necessary, proper, sufficient, and requisite, to comprise the same; and that the said C. D. shall, in his own person, or by his attorney or attornies, lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said A. B.; and the said A. B. shall, in his own person, or by his attorney or attornies, lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said C. D.; and, taking the same upon himself, vouch over to warranty the common vouchee of the said Court of Common Pleas, for the time being, who shall appear gratis, and freely enter into the warranty of the said A. B., and, after imparlance, make default; so that judgment may be given upon the said writ or writs, and every of them, for the said E. F., or other demandant or demandants, to recover all and singular the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, by such names, quantities, qualities, and other descriptions as aforesaid, against the said C. D., and for the said C. D. to recover, in value, against the said A. B., and for the said A. B. to recover, in value, against the common vouchee, as is usual in such cases. And that, upon all and every recovery and recoveries, to be suffered as aforesaid, execution may be levied

and prosecuted by, and seisin had, taken, and delivered unto the said E. F., or other demandant or demandants, accordingly; and that every other act or thing needful, requisite, or proper, to be done or executed, for the purpose of suffering and perfecting a common recovery or recoveries of the manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, with double, (a) treble, or other voucher, to bar the estate tail of the said A. B., of and in the same manors, messuages, farms, lands, tenements, and hereditaments, and all reversions and remainders, over and expectant upon the same estates tail, may be made done and executed. AND, by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the said parties to these presents, as far as they respectively are interested; and they hereby, for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, consent and agree, according to their respective rights and interests in the premises, that the recovery or recoveries hereby agreed to be suffered, shall be suffered and perfected with all possible dispatch, and that they respectively, and their respective heirs, will, on their respective parts, use their utmost endeavours to give effect to the same recovery, and also these presents, and the grant, bargain, and sale, or other assurance hereby made. AND Use. it is hereby further directed, declared, and agreed, by and between all the said parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon or after judgment obtained, and seisin had and taken, upon such

(a) Query the propriety of the words "treble or other;" it would perhaps be more correct to omit them.

recovery or recoveries, as aforesaid, the recovery or recoveries, so as aforesaid, or in any other manner, or at any other time or times, to be suffered, and also these presents, and the assurance hereby made; and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter had, made, done, levied, suffered, executed, and perfected, of or concerning all or any part of the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, either by themselves solely and alone, or jointly and together with any other lands, tenements, or hereditaments, by or between all and every, or any or either, of the persons who are parties to these presents, or to which they, or any, or either of them is, or are, or shall, or may be parties or privies, or a party or privy, shall, as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine or fines, common recovery or recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure; and also, that the person or persons, to whom the said fine or fines, common recovery or recoveries, and other assurances, respectively have or hath been, or shall, or may be levied, suffered, made, and executed, shall stand and be seized as to, for, and concerning the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, TO THE USE of the said

G. P., his heirs and assigns, for ever, and to no other use, nor upon or for any other trust, intent, or purpose whatsoever. (b)

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VII.

*Bargain and Sale, in fee, of a manor, &c. for Recoveries, with double voucher, to the use of the Bargainor.*

THIS INDENTURE OF THREE PARTS, made, &c. BETWEEN A. B. (a) of &c. Esquire, eldest son, and heir male of G. B., late of &c. Esquire, and who was the eldest son of Sir H. B., Knight, late of &c. of the first part; C. D. (b), of &c. Gentleman, of the second part; and E. F. (b), of &c. Gentleman, of the third part. WITNESSETH, that, for (c) docking, barring, destroying, and extinguishing all estates tail, and all remainders, reversions, estates, and contingencies, expectant or depending thereon, of or in the manor, messuages or tenements, lands, and hereditaments, hereinafter by these presents granted, bargained, and sold, or intended so to be, and of and in the appurtenances thereunto belonging; and for conveying, settling, and assuring the said manor, messuages or tenements, lands, and heredita-

Parties.

Consideration.

(b) This may be considered as one of the most simple forms, and adapted to all cases not attended with special circumstances.—Preston's Conv. tit. Rec.

(a) The tenant in tail, and vouchee in the recovery.

(b) His solicitors, C. D., the te-

nant, and E. F., the demandant in the recovery.

(c) Or, "for barring all estates tail, remainders and reversions, of and in the manors, &c. hereinafter mentioned, and for assuring the same to the said A. B., his heirs and assigns.

Bargain,  
&c.

Parcels.

ments, with their appurtenances, to the several uses, upon the several trusts, and for the several intents and purposes hereinafter mentioned, of and concerning the same; and in consideration of the sum of ten shillings, of lawful money of the united kingdom of Great Britain and Ireland current in Great Britain, to the said A. B., in hand, paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; he, the said A. B., HATH granted, bargained, sold, and confirmed, and, by these presents, BOTH grant, bargain, sell, and confirm, unto the said C. D., and his heirs, ALL that the manor of C., in the county of O., and the capital messuage or mansion-house there, with the gardens, orchards, and appurtenances thereunto belonging, and the barn-close, the warren-close, &c. AND ALSO ALL and singular the messuages or tenements, farms, lands, and hereditaments of him, the said A. B., in the several parishes of B., C., and D., any or either of them, in the said county of O. (d), with all privileges and advantages thereto belonging. AND ALSO ALL those several pieces or parcels of upland and marsh land of him, the said A. B., situate, lying, and being in the parish of B., in the county of M., and hereinafter mentioned, that is to say, All that one piece or parcel of marsh land, containing, by estimation, seven acres, be the same more or less; one other piece or parcel, &c.

(d) Care should be taken that the lands are sufficiently ascertained by particular description or general words; and where the parcels are of considerable length, or the description of them is attended with nicety, or involved in any difficulty or

uncertainty, general words should be added; extending to all the townships, parishes, &c., in which the lands lie, so as to embrace, under these terms, any parcels omitted out of the particular description. Preston's Conv. tit. Recovery.

Together with all houses, out-houses, &c., and all other rights, royalties, franchises, jurisdictions, liberties, privileges, profits, commodities, advantages, emoluments, hereditaments, and appurtenances whatsoever to the said manor or lordship, farms, messuages, lands, tenements, hereditaments, and premises, hereby bargained and sold, or mentioned or intended so to be, every or any of them, and every part thereof, in any wise belonging or appertaining, or accepted, reputed, deemed, taken, or known, demised, letten, or enjoyed, as part, parcel, or member of them, or any of them; (e) and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part thereof; and all the estate, right, title, interest, property, equity of redemption, claim, and demand whatsoever, both at law and in equity, of him, the said A. B., of, in, to, or out of the said manor, messuages, lands, tenements, hereditaments, and premises, hereby, or mentioned to be hereby bargained and sold, or any of them, or any part or parcel thereof. To HAVE AND TO HOLD the said manor, messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby bargained and sold, or mentioned or intended so to be, with their and every of their rights, members, and appurtenances, unto the said C. D., his heirs and assigns, to the use and behoof of the said C. D., his heirs and assigns. To the INTENT and purpose, that the said C. D. may become and be a perfect tenant of the freehold of the said manor, messuages, farms, lands, tenements, hereditaments, and premises, to the end that two or more good and

General words.

Haben-  
dum.

Intent.

(e) Or, "and all other the manors, &c., lands, tenements, and hereditaments, whatsoever of him the said A. B. or of any other per-

son or persons in trust for him, situate in, &c. aforesaid and elsewhere in the said counties of, &c."

perfect common recoveries may be thereof had and suffered, in manner hereinafter mentioned. For which purpose it is hereby declared and agreed, by and between all the said parties to these presents, that it shall and may be lawful to and for the said E. F., at the costs and charges of the said A. B., as of this present *Easter* term, *Trinity* term next, or some other subsequent term, to sue forth and prosecute, out of His Majesty's High Court of Chancery, two or more writs of entry *SUR DISSEISIN EN LE POST*, returnable, and to be returned, before His Majesty's Justices of the Court of Common Pleas at Westminster, thereby demanding, by apt and convenient names, quantities, qualities, number of acres, and other descriptions, the said manor, messuages, farms, lands, tenements, hereditaments, and premises hereinbefore mentioned, and hereby bargained and sold, or intended so to be, with the appurtenances, against the said C. D., to which said writs of entry he, the said C. D., shall appear gratis, either in his own proper person, or by his attorney thereto lawfully authorised, and vouch over to warranty the said A. B., who shall also appear gratis, in his own proper person, or by his attorney thereto lawfully authorised, and enter into the warranty, and vouch over the common vouchee who shall likewise appear, and, after imparlance, make default, so as that judgment shall and may be thereupon had and given (*f*) to and for the said E. F., to recover the said manor, messuages, farms, lands, tenements, hereditaments, and premises, with their appurtenances, against

(*f*) Or, "and such other proceedings had therein, that two or more good and perfect common recoveries, with double voucher, may be had and suffered, of all

and singular the said manors, &c., according to the course of common recoveries with double voucher, for the assurance of lands in such cases used and accustomed.



the said C. D., and for him to recover, in value, against the said A. B., and for him to recover, in value, against the said common vouchee, and that execution shall and may be had and awarded accordingly, and all and every other act and acts, thing and things, done and executed, needful and requisite for the suffering and perfecting such common recoveries, with vouchers, as aforesaid. AND it is hereby agreed and declared, by Use. and between all the said parties to these presents, (g) and the true intent and meaning of them, and of these presents, is, that, from and immediately after the perfecting and suffering the said common recoveries, as aforesaid, or in any other manner, or at any other time or times, to be suffered, as well these presents, and the conveyance and assurance hereby made, as also the said common recoveries, and all and every other common recoveries, fines, conveyances, and assurances, in the law whatsoever heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of or concerning, the said manor, messuages, farms, lands, tenements, hereditaments, and premises, hereinbefore mentioned to be hereby bargained and sold, or intended so to be, or any of them, or any part or parcel thereof, by or between the said parties to these presents, or any of them, or whereunto

(g) Or, "that the said common recoveries, so to be had and suffered in manner aforesaid, and all and every other recovery or recoveries, fine or fines, assurance or assurances whatsoever, already had, levied, suffered, or executed, or hereafter to be had, levied, suffered, or executed of the said manors, &c. by or between the parties to these pre-

sents, or any of them, shall be and enure, and from and after the suffering and completing the said common recoveries as aforesaid, the said E. F., and his heirs, shall stand and be seized of the said manors, &c., to the use and behoof of the said A. B. his heirs and assigns for ever, and to and for no other use, intent, or purpose whatsoever.

they, or any of them, are, is, shall, or may be parties or privies, shall be and enure, and shall be construed, adjudged, deemed, and taken, and are and were meant and intended to be and enure, and the recoveror and recoverors, in the said recoveries, named, or to be named, and his or their heirs, shall stand and be seized of, and intitled to, all and every the said premises, with their appurtenances to, for, and upon such uses, trusts, intents, and purposes as are hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say, to the only proper use and behoof of the said A. B. his heirs and assigns, for ever, and to and for no other use, intent, or purpose whatsoever. In WITNESS, &c.

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### VIII.

*Release of manors, &c. for a Recovery with double voucher, to the use of the Grantor.*

**Parties.** THIS INDENTURE OF THREE PARTS, made, &c.,  
**Consideration.** BETWEEN Sir A. B. of &c. Bart., (a) of the first part, C. D., of &c. Gent., (b) of the second part, and E. F., of &c. Esq., (c) of the third part, WITNESSETH, that, for the barring and docking all intails and remainders of the manors or lordships, or reputed manors or lordships, advowson, capital messuages, or chief mansion-houses, messuages, cottages, lands, tenements, hereditaments, and premises after mentioned (d) and for the settling and

- (a) The tenant in tail, and vouchee in the recovery.
- (b) His solicitor, and tenant in the recovery.
- (c) His conveyancer, and demandant in the recovery.

- (d) A recovery is also sometimes suffered by a tenant in fee simple, in order to strengthen the title. Watkins on Conveyancing, b. ii. c. 16.

assuring the same in manner as is hereinafter mentioned, and also for and in consideration of the sum of ten shillings of lawful money, &c., to him the said Sir A. B. in hand paid by the said C. D., at or before the execution of these presents, the receipt whereof is hereby acknowledged, he, the said Sir A. B. HATH granted, Release. bargained, sold, aliened, released, and confirmed, and by these presents BOTH grant, bargain, sell, alien, release and confirm unto the said C. D., his heirs and assigns, ALL that the manor or lordship of G., other- Parcels: wise H., with all and singular the rights, members, and appurtenances thereof whatsoever, in the county of N.: AND ALL that the advowson, donation, presentation, free disposition and right of patronage of the parish church of G. aforesaid: AND ALL that the capital messuage, or chief mansion, or manorhouse of G. aforesaid: AND ALL and singular other messuages, cottages, lands, tenements, closes, inclosed grounds, pieces and parcels of arable, meadow, and pasture ground, commons, profits, commodities, hereditaments and appurtenances whatsoever of the said Sir A. B., or wherein he, or any person or persons in trust for him, is or are seized of any manner of estate, in possession, reversion, remainder or expectancy, situate, lying and being in the towns, fields, parishes, precincts, and territories of G. aforesaid: (e) AND ALSO ALL that the manor or lordship of, &c., AND all and singular houses, outhouses, &c., courts leet, courts barons, &c. ALL which said manors or lordships, or reputed manors or lordships, advowson, capital messuages, chief mansion, or manor-houses, messuages, cottages, farms, lands, tenements, hereditaments and premises, with the appurtenances, are now in the actual possession of the said C. D., by virtue of a bargain and sale, &c., and the reversion and rever-

(e) See note (d), p. 230, *ante*.

Haben-  
dum.

Intent.

sions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said Sir A. B., of, in, to, or out of the said manors or lordships, or reputed manors or lordships, advowson, capital messuages, or chief mansion or manor-houses, messuages, cottages, farms, lands, tenements, hereditaments and premises, or any of them, or any part or parcel thereof. To HAVE AND TO HOLD the said manors and hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby granted and released, with their and every of their appurtenances, unto the said C. D., his heirs and assigns: (f) To THE INTENT that, by virtue of these

(f) Or, "To the intent and purpose hereinafter mentioned, (that is to say,) It is hereby agreed and declared, between and by the parties to these presents, that, with all convenient speed after the sealing and delivery of these presents, one or more common recovery or common recoveries, shall (at the equal costs and charges of the said, &c.) be had and suffered of the same hereditaments, before his Majesty's justices of his Court of Common Pleas at Westminster, in which common recovery the said, &c. shall be demandant, the said &c. shall be tenant, and vouch the said &c., and the said &c. shall vouch over the com-

mon vouchee of the said Court of Common Pleas. And that all such further acts, deeds, matters, and things shall be done, as shall be proper, necessary, or expedient for perfecting and completing the said common recovery. And it is hereby also agreed and declared between and by the parties to these presents, that the common recovery which shall be suffered of the said messuages, &c., or any of them, or any part of the same, in the manner and form aforesaid, or in any other manner or form, and that all other common recoveries, and all fines, conveyances and assurances which have been, or shall be suffered, levied, executed,

presents, he the said C. D. may become and be perfect tenant of the freehold of the same manors, &c., hereditaments and premises. AND, therefore, it is hereby covenanted, granted, concluded, and agreed upon, by and between all the said parties to these presents, that it shall and may be lawful to and for the said E. F., at the costs and charges of the said Sir A. B., before the end of *Easter* Term now next ensuing, to sue forth and prosecute out of his Majesty's High Court of Chancery, one writ of entry *SUB DISSEISIN EN LE POST*, and to be returned before his Majesty's justices of the Court of Common Pleas at Westminster, thereby demanding, by apt and convenient names, quantities, qualities, number of acres, and other descriptions, the same manors, &c., hereditaments and premises against the said C. D.; to which said writ of entry, he the said C. D. shall appear gratis, and vouch over to warranty the said premises to the said Sir A. B., who shall also appear gratis in his own proper person, or by his attorney or attornies in that behalf lawfully authorised, and enter into warranty, and vouch over to warranty the common vouchce of the same Court, who shall also appear, and after imparlance make default, so as judgment shall and may thereupon be had and given for the said E. F., to recover the same manors, &c., hereditaments and premises, against the said C. D., and for him to recover, in value, against the said Sir A. B., and for the said Sir A. B. to recover, in value, against the common vouchce, and that execution shall and

or had, by or between the parties to these presents, or any of them of the said messuages, &c., or any part of the same shall immediately after the perfecting, and completing of the said com-

mon recovery, hereinbefore agreed to be suffered, operate, and endure, to the uses hereinafter expressed and contained of the said hereditaments respectively, that is to say, As to, &c.

Use.

may thereupon be had and awarded accordingly, and all and every other act and thing done and executed, needful and requisite for the suffering and perfecting such common recovery with voucher as aforesaid. AND it is hereby declared and agreed, by and between all the said parties to these presents, that from and after the suffering and perfecting of such common recovery so as aforesaid, or in any other manner, or at any other time or times to be suffered, as well these presents and the conveyance and assurance hereby made, as also the said common recovery, and all and every other common recovery and recoveries, fines, conveyances, and assurances in the law whatsoever, heretofore had, made, levied, suffered, or executed of the same manors, &c., hereditaments and premises, or any of them, or any part thereof, by or between the said parties to these presents, or any of them, or whereunto they, or any of them, are or shall be party or parties, shall be and enure, and shall be adjudged, deemed, construed, and taken to be and enure; and the recoveror in the said recovery named, or to be named, and his heirs, shall stand and be seised of the same manors, &c., hereditaments and premises, and every of them, and every part thereof, with their and every of their rights, members, and appurtenances, to the only proper use and behoof of the said Sir A. B., his heirs and assigns for ever, and to and for no other use, intent, or purpose whatsoever. IN WITNESS, &c.

## IX.

*Bargain and Sale of a Rectory, &c., from a vendor,  
for a Recovery with double voucher, to the use of a  
purchaser.*

THIS INDENTURE OF THREE PARTS, made, &c., BE- Parties.  
TWEEN A. B., of, &c., Esq. of the first part, (a) C. D.,  
of, &c. Gent. of the second part, (b) and E. F., of, &c.,  
Esq. of the third part. (c) WHEREAS the said E. F. Recital.  
hath contracted and agreed with the said A. B. for the  
absolute purchase of the rectory, or parsonage, advow-  
son, messuage, glebe lands, tithes and hereditaments  
hereinafter mentioned, at or for the price or sum of  
600*l*. Now THIS INDENTURE WITNESSETH, that for Considera-  
and in consideration of the sum of 600*l*., of, &c., paid  
by the said E. F., &c., and for the barring and docking  
of all estates tail in the said rectory or parsonage, ad-  
vowson, messuage, glebe lands, tithes, and heredita-  
ments, and all remainders and reversions expectant  
thereupon; and also for and in consideration of the  
sum of five shillings of like lawful money to the said  
A. B. in hand paid, before the execution of these pre-  
sents by the said C. D., the receipt whereof is also  
hereby acknowledged, he, the said A. B. HATH granted,  
bargained, and sold, and by these presents DOTH grant, Bargain,  
bargain, and sell unto the said C. D. and his assigns, &c.  
ALL that close of land called or known by the name of Parcels.  
Parson's Leys, containing by estimation seven acres,  
more or less, situate, lying and being in the parish of  
G. H., otherwise H. G., in the said county of K. : AND

(a) Vendor and vouchee in  
the recovery.

tenant in the recovery.

(b) Purchaser's solicitor, and

(c) Purchaser and demandant  
in the recovery.

ALL that the rectory or parsonage of the said church of G. H., otherwise H. G., in the said county of K., and the messuage or tenement, and glebe lands to the said rectory or parsonage belonging or appertaining : AND ALSO ALL and all manner of tithes and tenths, oblations, obventions, portions, and pensions, of what kind or quality soever, thereby or otherwise coming, growing, renewing, or increasing in G. H., otherwise H. G., aforesaid, and to the said rectory or parsonage belonging or appertaining : AND ALSO the advowson, donation, right of presentation and free disposition of, in, and to the vicarage of the church of G. H., otherwise H. G. aforesaid; together with all and every the rights, members, hereditaments, and appurtenances whatsoever to the said parcel of land, and the rectory, advowson, messuage or tenement, glebe lands, tenements, and premises, or any of them, incident or belonging, or in any wise appertaining, or therewith now or late held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, inheritance, benefit, property, claim, and demand whatsoever, both at law and in equity, of him, the said A. B., or any person or persons in trust for him, of, in, and to the said premises, and every or any part or parcel thereof. To HAVE AND TO HOLD the said parcels of land, rectory, messuage, glebe lands, hereditaments, advowson, and all and singular other the premises hereby granted or mentioned, or intended so to be, with their respective rights, members, appendances, and appurtenances, unto the said C. D. and his heirs. To THE INTENT and purpose only to make the said C. D. perfect tenant of the immediate freehold of all and singular the premises, to the end one good and perfect common recovery, with

Haben-  
dum.

Intent.



double voucher, may be thereof had, suffered, and executed before the end of *Hilary* Term next ensuing the day of the date hereof, or of some other subsequent Term, before his Majesty's Justices of the Court of Common Pleas at Westminster, in which said recovery the said E. F. shall be demandant, and the said C. D. tenant, who shall vouch to warranty the said A. B., who shall vouch to warranty the common vouchee of the said Court; and such other proceedings, acts, and things, shall be had, made, and done, as shall be needful and requisite for the suffering and perfecting of one good and perfect common recovery, with double voucher, of the said parcels of land, rectory, messuage, glebe lands, hereditaments, advowson, and all and singular other the hereby granted premises, with their rights, members, and appurtenances. AND it is hereby covenanted, granted, agreed and declared, by and between all and every the said parties hereto, and it is the true intent and meaning of them, and of these presents, that the said common recovery, and all and every other recovery and recoveries, fine and fines, conveyances and assurances in the law whatsoever already had, made, levied, suffered, or executed, or at any time hereafter to be had, made, levied, suffered, or executed of the said parcels of land, rectory, messuage, glebe lands, hereditaments, advowson and premises, with the appurtenances, by or between the said parties to these presents, or any of them, or whereunto they, or any of them, shall be party or parties, vouchee or vouches, from and immediately after the same shall be had, suffered, and perfected, shall be and enure, and is and are hereby agreed and declared to be and enure, to and for the only proper use and behoof of the said E. F., his heirs and assigns, for ever, and to and for no other use, trust, intent, or purpose whatsoever. COVENANTS from A. B. to E. F., that he is seised in fee of an estate tail in possession—

Use.

Covenants.

bath power to grant—for quiet enjoyment—that the premises are free from incumbrances—and for further assurance. IN WITNESS, &c.

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X.

*Conditional Surrender from the tenant for life to enable the remainderman to suffer a recovery.*

**Parties.** This Indenture (a) made, &c. **BETWEEN** (b) A. B. of, &c., widow and relict of C. B., late of, &c. Esq. deceased of the one part, and D. B. of, &c. surgeon, only surviving son and heir of the said C. B., by the said A. B., of the other part. **Recital.** WHEREAS, by virtue of divers settlements and assurances in the law, the messuages, closes, tithes, lands, tenements, and hereditaments, hereinafter particularly mentioned and described, are and stand settled and limited to the use of the said A. B., for and during her natural life for her jointure, and

(a) The life estate ought to be surrendered to the tenant in tail before he makes the tenant to the writ; for, if after, it must then be surrendered to the tenant to the writ. Piggot Com. Rec. 80.

(b) Or, "A. B., of, &c. widow, and relict of C. B., of, &c. Esq. deceased, of the one part, and D. B., of, &c. Esq. only son and heir apparent of E. B. of, &c. of the other part. Whereas (recital of C. B.'s will whereby he gives the premises to A. B., for her life.) And whereas the said C. B.,

soon after the making and publishing of his said will, departed this life, without having in any way revoked, annulled, or made void his said will or any thing therein contained, and the said will hath been since proved as aforesaid, in the High Court of Chancery. And whereas the said D. B. is, by force and virtue of the said will, tenant in tail of the said several manors, &c., in remainder after the decease of the said A. B.

subject thereto, the immediate remainder or reversion of the said messuages, closes, tithes, lands, tenements, and hereditaments, stand settled, and limited to the use of the said D. B., and the heirs of his body with remainders over. AND WHEREAS the said D. B., being minded and desirous by a common recovery to bar such estates tail, and the remainders or reversions expectant thereupon, the said A. B., for the enabling him so to do, hath at his request agreed to make a conditional surrender unto him the said D. B. of such her estate for life in the same messuages, closes, tithes, lands, tenements, and hereditaments. NOW THIS INDENTURE WITNESSETH, that (c), in pursuance and performance of the before-mentioned agreement of the said A. B., and for and in consideration of the sum of 10s. of &c. unto her in hand paid, by the said D. B., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations her thereunto moving, she the said A. B. HATH bargained, sold, surrendered, and yielded up, and by these presents BOTH bargain, sell, surrender, and yield up, unto the said D. B. and his heirs (d), ALL, &c., and also all and singular the houses, out-houses, &c., and hereditaments whatsoever to the said messuages, closes, tithes, lands, hereditaments, and premises belonging, or in any wise appertaining, or therewith now, or heretofore used, occupied, or enjoyed, or accepted, reputed, taken or known to be, as

(Consideration.)

(Surrender.)

(c) Or, "for the better enabling him the said D. B. to bar and extinguish all estates tail and remainders of and in the same premises."

(d) Or, "all and singular the said manors, &c. hereinbefore mentioned, to be given

and devised to the said &c., by the said recited will, with their and every of their appurtenances, and all the estate, right, title, and interest of her the said &c., of, in, and to the same, and every part and parcel thereof."

(Haben-  
dum.)

any part, parcel, or member thereof, or as belonging thereunto. To HAVE AND TO HOLD the said messuages, closes, tithes, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore mentioned and intended to be hereby surrendered, with their and every of their appurtenances, unto the said

(Proviso.) D. B. and his heirs. PROVIDED ALWAYS, and upon condition that (e) if the said D. B., his heirs or assigns, shall not well and truly pay, or cause to be paid, unto the said A. B. or her assigns, the full and just sum of 10,000*l.* of, &c., at or upon, &c., next ensuing the date of these presents, between the hours of ten and twelve of the clock in the forenoon of the said day, at the dwelling-house of, &c., then and in such case it shall and may be lawful to and for the said A. B. and her assigns into the said messuages, closes, tithes, lands, hereditaments, and premises, and every part and parcel thereof to re-enter, and the same to have again, repossess, and enjoy, as in her and their former estate, any thing herein contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c. (f).

(e) Or, "if the said &c., his heirs, executors, or administrators, or some of them, do not or shall not well and truly pay or cause to be paid, unto the said, &c., her executors, administrators, or assigns, the sum of &c., at or before &c. next ensuing the date of these presents, without any manner of abatement, out of the same, then and from thenceforth this

present surrender and every thing herein contained shall cease, determine, and be absolutely void, any thing in these presents contained to the contrary thereof notwithstanding."

(f) Surrender of the life estate was presumed where the deeds were suppressed by the tenant for life, *Gartside v. Ratcliffe*, Cha. Ca. 292. See also page 109, *ante*.

## XI.

*Covenant by the Vendor, a reversioner, to suffer a Recovery after the death of the tenant for life, to the use of the Purchaser (a).*

AND for the more effectually granting and conveying the said manor, hereditaments, and premises unto and to the use of the said C. D. his heirs and assigns, according to the true intent and meaning of these presents, he the said A. B. doth hereby for himself, his heirs, executors, and administrators, further covenant, promise, and agree, to and with the said C. D., his heirs and assigns, that he the said A. B., and all other necessary parties, shall and will, at his or their own proper costs and charges immediately, or as soon as conveniently may be after the death of the said E. F., duly suffer one or more common recovery or recoveries, of all and singular the said manor, hereditaments, and premises, hereinbefore granted and conveyed, or intended so to be, and which said recovery or recoveries to be so suffered, when and as the same shall have been actually suffered, shall be and enure, unto and to the use of the said C. D., his heirs and assigns for ever, and to and for no other use, trust, intent, or purpose whatsoever.

(a) This covenant was in a release of a reversion.

## XII.

*Descriptions of Parcels.*

An honour,  
hundred,  
borough,  
castle, ma-  
nors, parks,  
messuages,  
tofts, mills,  
dove-  
houses,  
gardens,  
orchards,  
land, &c.,  
wood, land  
covered  
with water,  
rents, re-  
deemed  
land-tax,  
commons,  
free fish-  
ery, courts,  
&c., es-  
trays,  
goods and  
chattels of  
felons, &c.

THE honour of A. the hundred of B., and the borough of B., with the appurtenances; and the castle of C. with the appurtenances; and also the manors (a) of D. E. F. and G., with the appurtenances, (b) and likewise the parks of H. and I. with the appurtenances and four hundred messuages (c) sixty barns, sixty stables, one hundred tofts, four mills, four water mills, ten dove-houses, four hundred gardens, four hundred orchards, (d) seven thousand acres (e) of land, (f) four thousand acres of meadow, eleven thousand acres of pasture, (g) two thousand acres of wood, three thousand acres of furze and heath, one thousand acres of moor, two thousand acres of downs waste lands and lawns, one thousand acres of marsh, one hundred acres of land covered with water, forty pound rent, one pound of pepper corn rent, fourteen pound seven shillings

(a) This word will pass *reputed* manors. *Thinne v. Thinne*, 1 Levinz. 27.

(b) The general things of which the manors consist, as demesnes, rents, seigniories, courts, pleas, &c. will pass by these words, *Billinghurst's Arc. Cler. title Fines*. All that belongs to the manor is comprehended in a *præcipe* of the manor. Pig. Rec. c. 2.

(c) Messuages, cover, curtilages in a recovery.

(d) Orchards were understood to pass under gardens, but now they are both used.

(e) Acres means customary acres, *Waddy v. Newton*, 8 Modern. 276.

(f) Land means arable. *Mursey v. Rice and Others*, Cowper's Rep. 246.

(g) In the description of land, it may be prudent to insert such a quantity under each species as will cover the whole to be passed, lest any mistake should arise, by part of the land afterwards changing its condition. See *Bartram and Another v. Towne and Others*, 6 Taunt. 58. and *ante* 74.

and fourpence redeemed land-tax, and also common of pasture for all manner of cattle, common of turbary, free fishery, free warren and liberty of foldage, courts leet, courts baron, hundred courts, courts of piepoudre, perquisites and profits of courts, view of frankpledge, and whatsoever to view of frankpledge belongeth, quarries, mines, escheats, estrays, goods and chattels waived, goods and chattels of felons and fugitives, felons of themselves, persons outlawed, attainted, waived, and put in exigent, reliefs, mortuaries, heriots, fines, amerciaments, wrecks of the sea, treasure trove, deodanda, fairs, markets, and tolls of fairs and markets, picage and stallage, customs, franchises, liberties, royalties, and privileges, with the appurtenances in A. B. C. D. E. F. G. H. I. K. and L.; and likewise the rectories of M., otherwise N. O. P. Q. and R.; and all and all manner of tithes whatsoever to the said rectories belonging or appertaining; and also the advowsons of the churches of S. T. and V. (h)

wrecks,  
treasure  
trove, deo-  
danda,  
fairs, mar-  
kets, &c.  
customs,  
&c. recto-  
ries, tithes,  
and advow-  
sons.

The said honour, hundred, borough, castle, manors, parks, tenements, rents, redeemed land-tax, commons, free fishery, free warren and liberty of foldage, courts leet, courts baron, hundred courts, courts of piepoudre, perquisites and profits of courts, view of frankpledge and whatsoever to the view of frankpledge belongeth, quarries, mines, escheats, estrays, goods and chattels waived, goods and chattels of felons and fugitives, felons of themselves, persons outlawed, attainted, waived and put in exigent, reliefs, mortuaries, heriots, fines, amerciaments, wrecks of the sea, treasure trove, deodanda, fairs, markets, and tolls of fairs and markets, picage and stallage, customs, franchises, liberties, royalties, and privileges, with the appurtenances, and the said rectories, and tithes, and the advowsons aforesaid.

General  
descrip-  
tion.

(h) As to the description of the names, quantities, and situa-

tions of the parcels, see *ante*, p. 60—63.

Manors,  
messuages,  
mills, dove-  
houses,  
gardens,  
orchards,  
land, wood,  
furze and  
heath, land  
covered  
with water,  
rents, com-  
mons of  
pasture and  
turbary,  
free fish-  
ings, a se-  
parate fish-  
ing, tithes,  
advowson  
of a church,  
and ad-  
vowson of  
vicarages.

General  
descrip-  
tion.

THE manors of A. B. otherwise B. C. D., otherwise E. F. and G., with the appurtenances; and two hundred messuages, six mills, four dove-houses, one hundred and fifty gardens, seventy orchards, three thousand acres of land, two thousand acres of meadow, two thousand acres of pasture, three hundred acres of wood, five hundred acres of furze and heath, one hundred acres of land covered with water, forty pounds rents, (i) common of pasture for all cattle, common of turbary, the free fishings in the rivers H. and I., and a separate fishing in the rivers H. and I., with the appurtenances in A. B. otherwise B. C. D., otherwise E. F. G. K. and L.; and also (k) the tithes of grain and hay yearly arising, growing, or renewing, in A. B. F. and G.; and moreover the tithes of corn, grain, hay, wool, flax, hemp, and lambs, yearly arising, growing, or renewing in R.; and the advowson of the church of F.; and also the advowsons of the vicarages of the churches of A. B. otherwise B. C. F. and G.

The manors, tenements, rents, commons, free fishings, and separate fishing aforesaid, with the appurtenances, and the tithes and advowsons aforesaid.

Third part  
of manors,  
messuages,  
tofts, mills,  
dove  
houses,  
gardens,  
orchards,  
land, wood,  
furze and  
heath,  
moor,  
moss,

THE third part of the manors of A. and B., with the appurtenances; and the third part of five hundred messuages, one hundred tofts, ten water corn mills, ten windmills, fifty dove-houses, five hundred gardens, five hundred orchards, five thousand acres of land, two thousand acres of meadow, four thousand acres of pasture, two hundred acres of wood, five hundred acres of furze and heath, five thousand acres of moor, five

(i) Or, "the annual rent, of &c., issuing out of lands and tenements in &c.," or, "the annual rent of &c., issuing out of three closes in &c."

(k) Or, "all and all manner of

tithes whatsoever. in &c."—  
or, "all and all manner of tithes yearly arising, growing or renewing from and out of, &c., parcel of the premises aforesaid."



hundred acres of moss, fifty acres of salt marsh, four hundred acres of fresh marsh, fifty acres of rushes, fifty acres of alders, fifty acres of reeds, and fifty shillings rent, and common of pasture for all cattle, common of turbary, free fishing, free warren, court leet, court baron, view of frankpledge, goods and chattels of felons, fugitives, felons of themselves outlawed, attainted, waived, and put in exigent, estrays, escheats, deodands, treasure trove, passage of water, and tolls of coals with the appurtenances, in A. B. and C.; and also the advowson of the church of A.

marsh,  
rushes, al-  
der, reeds,  
rent, com-  
mons, free  
fishing,  
free war-  
ren, courts  
&c. pass-  
age of wa-  
ter, tolls,  
and advow-  
son.

The parts, commons, free fishing, free warren, court leet, court baron, view of frankpledge, goods and chattels of felons, fugitives, felons of themselves, outlawed, attainted, waived, and put in exigent, estrays, escheats, deodands, treasure trove, passage, and tolls aforesaid, with the appurtenances and the advowson aforesaid.

General  
descrip-  
tion.

A MOIETY (*l*) of two messuages, two curtilages, two gardens, and one acre of land; and one eighth part of twenty-four acres of land, and four acres of pasture with the appurtenances in A. and in the parish of B.

A moiety of  
messuages,  
curtilages,  
gardens,  
and land;  
and an  
eighth part  
of land.

The moiety and part aforesaid with the appurtenances,

General de-  
scription.

ONE moiety of fifty messuages, forty gardens, one wharf, fifty acres of land, twenty acres of meadow, fifty acres of pasture, and five acres of wood with the appurtenances in A. otherwise B. C. and D., and of the rectory of A. otherwise B. with the appurtenances.

A moiety of  
messuages,  
gardens,  
wharf, land,  
wood, and  
rectory.

The moiety aforesaid with the appurtenances.

General de-  
scription.

(*l*) The moiety, or other part of  
an entire thing, must be par-

ticularly named in the con-  
cord, &c.

**A third part of a messuage, barn, stable, garden, land, wood and common of pasture.**  
**General description.** A THIRD part of one messuage, one barn, one stable, one garden, seventy acres of land, ten acres of pasture, and twelve acres of wood, and common of pasture for all cattle with the appurtenances in A., and in the parishes of B. and C.

The part and common aforesaid with the appurtenances.

**Messages, land and part of a navigation, tolls, &c.** TWENTY messages, six hundred acres of land, four hundred acres of meadow, four hundred acres of pasture, and common of pasture, with the appurtenances; and one twentieth part of the navigation of the rivers A. and B., and all tolls, profits, messuages, mills, lands, and hereditaments thereto belonging with the appurtenances in C. D. E. F. and G., and the parishes of C. D. H. I. and K.

**General description.** The tenements, common and part aforesaid with the appurtenances.

**Part of a moiety of messuages, land, stream of water and watercourse.** ONE thirty-sixth part of a moiety of eight messuages, one hundred acres of pasture, one hundred and fifty acres of land covered with water, and one cut and one stream of running water, (m) and watercourse with the appurtenances in, &c. (n)

**General description.** The part aforesaid with the appurtenances.

**Message, barn, hop-** ONE message, one barn, one hop-kiln, ten acres of

(m) So named in the act of the 3rd James I. c. 18.

(n) This is a description of a new river share in the county of Hertford; but as the water runs also into Middlesex and

London, there must be three fines or recoveries, one in each bailiwick. The particular descriptions in the three bailiwicks may be seen in the office books.

land, five acres of meadow, five acres of pasture, and ten acres of hop-ground with the appurtenances in A. kiln, hop-ground, &c.

The tenements aforesaid with the appurtenances. General description.

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Two messuages, two barns, two stables, two out-houses, and sixty acres of land with the appurtenances in A. Messuages, barns, stables, &c.

The tenements aforesaid with the appurtenances. General description.

---

THREE messuages, two chapels, four yards, four cellars, and one acre of land, with the appurtenances, in the parish of A. Messuages, chapels, yards, &c.

The tenements aforesaid with the appurtenances. General description.

---

THREE messuages, two kitchens, two stables, and one lime-kiln (o) with the appurtenances in the parish of A. Messuages, kitchens, &c.

The tenements aforesaid with the appurtenances. General description.

---

Two messuages, three stables, three chaise-houses, and three yards, with the appurtenances in the parish of A. Messuages, stables, &c.

The tenements aforesaid with the appurtenances. General description.

---

SEVEN messuages, two brewhouses, three store-houses, and half an acre of land, with the appurtenances, in the parish of A. Messuages, brewhouses, &c.

The tenements aforesaid with the appurtenances. General description.

(o) Or, "hop-kiln."

Message, forge, &c. ONE message, one garden, one orchard, and one forge, with the appurtenances in A.

General description. The tenements aforesaid with the appurtenances.

---

Message, shop, &c. ONE message, one shop, one brewhouse, and one garden, with the appurtenances in A.

General description. The tenements aforesaid with the appurtenances.

---

Messages, stables, forge, &c. TWENTY-two messages, two stables, one shop, one forge, and two rooms, with the appurtenances, in the parish of A.

General description. The tenements aforesaid with the appurtenances.

---

Message, stable, &c. ONE message, one coach-house, one stable, and one garden, with the appurtenances in A.

General description. The tenements aforesaid with the appurtenances.

---

Messages, curtilages, stables, gardens, &c. FIFTY messages, fifty curtilages, fifty stables, fifty gardens, and five acres of land, with the appurtenances, in the parishes of A. B. C. D. E. and F.

General description. The tenements aforesaid with the appurtenances.

---

Messages, cottages, land and common of pasture. Two messages, two cottages, fifty acres of land, twenty acres of meadow, twenty acres of pasture, and common of pasture for all cattle, with the appurtenances in A. B. and C.

General description. The tenements and common aforesaid with the appurtenances.

FOUR messuages, four gardens, eight acres of land, eight acres of pasture, and common of pasture for all manner of cattle, with the appurtenances in A.

Messuages,  
gardens,  
land, and  
common of  
pasture.  
General de-  
scription.

The tenements and common aforesaid with the appurtenances.

SIX messuages, one hundred acres of land, one hundred acres of meadow, one hundred acres of pasture, ten acres of wood, and common of pasture for all manner of cattle, with the appurtenances, in A. and in the parish of A.

Messuages,  
land, wood,  
and com-  
mon of  
pasture.

The tenements and common aforesaid with the appurtenances.

General de-  
scription.

ONE third (p) part of one messuage, thirty acres of land, twenty acres of meadow, and twenty acres of pasture, and common of pasture for all manner of cattle, with the appurtenances in A.

Part of a  
messuage,  
land, and  
common of  
pasture.

The part and common aforesaid with the appurtenances.

General de-  
scription.

SIXTY messuages, forty gardens, thirty acres of land, ten acres of meadow, twenty acres of pasture, and ten acres of land covered with water, with the appurtenances in the parishes of A. B. C. and D.

Messuages,  
gardens,  
land, and  
land cover-  
ed with  
water.

The tenements aforesaid with the appurtenances.

General de-  
scription.

TWO messuages, two gardens, and one acre of land; and a moiety of two messuages, three gardens, thirty

Messuages,  
gardens,  
land, and a  
moiety of  
messuages,  
&c.

(p) Or, "one-fourth," &c.

acres of land, thirty acres of meadow, and sixty acres of pasture, with the appurtenances, in the parish of A.

General description.

The tenements and moiety aforesaid with the appurtenances.

---

Messuages, tofts, &c.

FOUR messuages, four tofts, and four curtilages, with the appurtenances, in the parish of A.

General description.

The tenements aforesaid with the appurtenances.

---

Messuages, square yards of land, &c.

THREE messuages, three cottages, and two thousand square yards of land (g) with the appurtenances, in the parish of A.

General description.

The tenements aforesaid with the appurtenances.

---

A moiety of messuages, gardens, and land.

A MOIETY of fifteen messuages, fifteen gardens, and two acres of land, with the appurtenances, in the parish of A.

General description.

The moiety aforesaid with the appurtenances.

---

Parts of a messuage, garden, and land.

FIVE tenth parts of one messuage, one garden, ten acres of land, five acres of meadow, and five acres of pasture, with the appurtenances, in A.

General description.

The parts aforesaid with the appurtenances.

---

Parts of a third part and parts of an eighth of messuages, gardens, and land.

Two third parts of one third part of twelve messuages, ten gardens, eighty acres of land, forty acres of meadow, sixty acres of pasture; and one third part of one eighth part of two messuages, two gardens, twenty acres of land, ten acres of meadow and ten acres of pasture with the appurtenances in A. B. C. D. E. and F.

General description.

The parts and common aforesaid, with the appurtenances.

(g) Or, "three hundred square feet of land."

ONE message, one workshop, and one garden, with the appurtenances in A.	Message, workshop, &c.
The tenements aforesaid, with the appurtenances.	General description.

---

ONE message, one yard, and one garden, with the appurtenances, in the parish of A.	Message, yard, &c.
The tenements aforesaid, with the appurtenances.	General description.

---

THREE cellars, three vaults, three warehouses, and three storehouses, with the appurtenances in A.	Cellars, vaults, &c.
The tenements aforesaid, with the appurtenances.	General description.

---

TWO warehouses, one granary, and half an acre of land, with the appurtenances in A.	Warehouses, granary, &c.
The tenements aforesaid, with the appurtenances.	General description.

---

FIVE messages and two warehouses with the appurtenances in the parishes of A. and B.	Messages and warehouses.
The tenements aforesaid, with the appurtenances.	General description.

---

THREE messages and three tofts, with the appurtenances in the parish of A.	Messages and tofts.
The tenements aforesaid, with the appurtenances.	General description.

---

ONE message and half a rood of land, with the appurtenances in A.	Message and land.
The tenements aforesaid, with the appurtenances.	General description.

Part of messuages and land.      ONE third part of six messuages, and one acre of land, with the appurtenances in the parish of A.  
 General description.      The part aforesaid, with the appurtenances.

---

Messuages and gardens.      Two messuages and two gardens, with the appurtenances in the parish of A.  
 General description.      The tenements aforesaid, with the appurtenances.

---

Messuages and common of pasture.      ONE message, and common of pasture for all cattle, with the appurtenances in the town of A.  
 General description.      The message and common aforesaid, with the appurtenances.

---

Message and sugar-houses.      ONE message and two sugar-houses, with the appurtenances in the parish of A.  
 General description.      The tenements aforesaid, with the appurtenances

---

Message and gardens.      FIVE messuages and five gardens, with the appurtenances in the parish of A.  
 General description.      The tenements aforesaid, with the appurtenances.

---

Chambers, shops, &c.      FOUR chambers, two shops, and three cellars, with the appurtenances.  
 General description.      The tenements aforesaid, with the appurtenances.

---

Granary and land.      ONE granary and sixty acres of land, with the appurtenances in the parish of A.  
 General description.      The tenements aforesaid, with the appurtenances.



ONE toft and half an acre of land, with the appurtenances in the parish of A.	Toft and land.
The tenements aforesaid, with the appurtenances.	General description.

---

ONE messuage, (a) with the appurtenances in the parish of A.	Messuage.
The messuage aforesaid, with the appurtenances.	General description.

---

A moiety of one messuage, with the appurtenances in the parish of A.	Moiety of a messuage.
The moiety aforesaid, with the appurtenances.	General description.

---

ONE fourth part of eight messuages, with the appurtenances in the parishes of A. and B.	Part of messuages.
The part aforesaid, with the appurtenances.	General description.

---

ONE warehouse, with the appurtenances in the parish of A.	Warehouse.
The warehouse aforesaid, with the appurtenances.	General description.

---

SEVEN chambers, with the appurtenances in Lincoln's Inn.	Chambers.
The tenements aforesaid, with the appurtenances.	General description.

(a) A *præcipe* lieth not *de domo*, but *de messuagio*, Co. Litt. l. 1. c. 8. s. 69. Tenement insufficient, *Steed and Courte-*

*ney's case*, 1 Leon. Rep. 188. So messuage or tenement, *Goodright d. Welsh v. Flood*, 3 Wilson's Rep. 23.

Part of a moiety of a storehouse. **ONE fourth part of a moiety of one storehouse with the appurtenances in the town of A.**

General description. **The part aforesaid, with the appurtenances.**

---

Land, meadow, and pasture. **TWENTY acres of land, twenty acres of meadow, and ten acres of pasture, with the appurtenances in A.**

General description. **The tenements aforesaid, with the appurtenances.**

---

Land, pasture, and marsh. **TEN acres of land, ten acres of pasture, and sixty acres of marsh, with the appurtenances in A.**

General description. **The tenements aforesaid with the appurtenances.**

---

Land, and free fishing. **THIRTY acres of land, thirty acres of pasture, and one hundred and thirty-five acres of marsh, and free fishing, with the appurtenances in A. and B.**

General description. **The acres and free fishing aforesaid with the appurtenances.**

---

Land, and a chalk-pit. **SIX acres of land and one chalk-pit with the appurtenances in A.**

General description. **The tenements aforesaid with the appurtenances.**

---

A way and land. **ONE way, thirty acres of land, and thirty acres of pasture, with the appurtenances in A. B. and C.**

General description. **The way and tenements aforesaid with the appurtenances.**

---

Land, and common of pasture. **Ten acres of land, ten acres of meadow, and ten acres of pasture, and common of pasture for all manner**

of cattle, with the appurtenances in the parishes of A., otherwise A. B. and C.

The acres and common aforesaid with the appurtenances. General description.

Two acres and three roods of land (*x*) with the appurtenances in the parish of A. Acres, and roods of land.

The land aforesaid with the appurtenances. General description.

HALF an acre of land (*y*) with the appurtenances in the parish of A. Half an acre of land.

The land aforesaid with the appurtenances. General description.

ONE acre of marsh with the appurtenances in the parish of A. Marsh.

The marsh aforesaid with the appurtenances. General description.

Two thousand acres of wood (*z*) with the appurtenances in the parishes of A. B. C. D. E. and F. Wood.

The acres aforesaid with the appurtenances. General description.

THE yearly rent of one hundred pounds (*a*) issuing Rent.

- (*x*) Land may pass by any certain measure of the superficial quantity, as a rood, &c. Touchstone, c. 2. And by the description of a rood of land the fourth part of an acre passes.
- (*y*) Or, "a quarter of an acre of land," or "three perches of land," or "half a rood of land."
- (*z*) Wood will pass the land itself, as well as the wood, and by that name is to be demanded in a *præcipe*, Co. Litt. l. 1. c. 1.
- (*a*) A recovery may be suffered of a rent charge, *Turner v. Turner*, 1 Brown's Ch. Ca. 316.

out of (b) and from the manor of A. with the appurtenances, and out of and from one hundred messuages, one hundred cottages, one hundred barns, five dove-houses, twenty gardens, twenty orchards, one thousand acres of land, five hundred acres of meadow, five hundred acres of pasture, twenty acres of wood, and one hundred acres of furze and heath, with the appurtenances in A. B. and C., and also out of a free fishing in the water of A., with the appurtenances in A. B. and C.

General description.

The rent aforesaid.

---

Moiety of a rent.

THE moiety of the yearly rent of 23*l.* 9*s.* 8*d.* issuing out of sixty messuages with the appurtenances in A.

General description.

The moiety aforesaid.

---

Rectory and advowson.

THE rectory of the church of A. with the appurtenances, and the advowson of the church of A. aforesaid.

General description.

The rectory aforesaid with the appurtenances and the advowson aforesaid.

---

Tithes and advowson.

ALL and all manner of tithes arising growing or renewing in A. and B., and the advowson of the churches of A. and B.

General description.

The tithes and advowson aforesaid.

---

Rectory and tithes.

THE rectory of A. with the appurtenances, and

(b) Or "one messuage with the appurtenances in the parish of A.," or "from and out of

certain messuages, lands, and hereditaments, in the parishes of A. and B."

all and all manner of tithes arising growing or renewing in B.

The rectory aforesaid with the appurtenances and the tithes aforesaid. General description.

ONE sixth part of the rectory of A. otherwise B. with the appurtenances, and one sixth part of all and all manner of tithes arising growing or renewing in C. Parts of rectory, and tithes.

The parts aforesaid with the appurtenances. General description.

THE rectory of A. (c) with the appurtenances. (d) The rectory aforesaid with the appurtenances. Rectory.  
General description.

### XIII.

#### *Description of Parties.*

A., Duke of B., and C., his wife.—The said Duke and C. Duke and Duchess.

D., Marquis of E., and F., his wife.—The said Marquis and F. Marquis and Marchioness.

G., Earl of H., and I., his wife.—The said Earl and I. Earl and Lady.

(c) Or "a moiety of the rectory of A. rectory, advowson, vicarage, and tithes impropriate, Touchstone, c. 2.  
(d) This will pass a parsonage,

Viscount and Viscountess.      K., Viscount L., and M., his wife.—The said Viscount and M.

---

Lord and Lady.      N., Lord O., and P., his wife.—The said N. and P.

---

Bishop and Lady.      The Right Reverend A., Lord Bishop of C., and E., his wife.—The said Bishop and E.

---

Baronet and Lady.      Sir C. D., Baronet, and E., his wife.—The said C. and E.

---

Knight and Lady.      Sir F. G., Knight, and H., his wife.—The said F. and H.

---

Esquire and wife.      I. K., Esquire, and L., his wife.—The said I. and L.

---

Gentleman and wife.      M. N., Gentleman, and O., his wife.—The said M. and O.

---

Common person and wife.      P. Q., and R., his wife.—The said P. and R.

---

Father and son.      S. T., and S. T. the younger.—The said S., and S. the younger.

---

Brothers.      U. V., and U. V. the younger.      The said U., and U. the younger.

---

Cross names.      W. X. and W. Y.—The said W. X. and W. Y.

## XIV.

*Præcipe for dedimus to take the acknowledgment of a fine before Commissioners. (a)*

DEVONSHIRE. } Command A. B., and C., his wife, that  
(to wit.) } justly and without delay they perform  
to E. F. the covenant made between  
them, of [*the parcels (b) particularly  
described,*] and unless, &c.

Ded. to I. K., }  
L. M., } Gent.  
N. O., }  
P. Q., }

To be sealed at the next general seal.

H—15th September, 1815.

## XV.

*Writ of Dedimus potestatem.*

George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender

(a) If there be several cognizors, and any of them intend to acknowledge the fine before any of the puisne judges of the Court of Common Pleas, omit the names of such cognizors in this *præcipe*, and confine it to those whose ac-

knowledgments are to be taken before Commissioners.

(b) The parcels the cursitor will set right in the writ, if they do not happen to be put so in the *præcipe*. See *ante*, p. 115. note a.

of the Faith. To our trusty and well-beloved Sir Thomas Turton Baronet, (c) and to our beloved I. K., L. M., N. O., and P. Q., Gentlemen, greeting. Whereas our *writ of covenant* (d) is depending before our Justices of the Bench, between E. F. and A. B., and C., his wife, concerning, [*the parcels described at length from the præcipe*] in Devonshire, that a fine may be levied between them, before our said Justices in the same Bench, according to the law and custom of England. And the said A. and C. are so infirm, (e) that they cannot, without the greatest bodily danger, travel to Westminster to make the acknowledgments in this behalf required, at the day in our said writ specified, as we are informed. We, tendering the condition of the said A. and C., have given power to you, or two of you, to take the acknowledgments which they, the said A. and C., shall be willing to make before you, or two of you, concerning the premises: and, therefore, we command you, or two of you, that, going in person, unto the said A. and C., you take their said acknowledgments; and, when you shall have taken the same, you, distinctly and plainly, under your seals, or the seals of two of you, certify our said Justices thereof; that then the fine aforesaid may be levied between the said parties of the premises before our said Justices in the same Bench, according to the law and custom above mentioned, sending to the same Justices

(c) This name the cursitor himself inserts as a matter of form.

(d) This is seldom or ever the fact; for the *dedimus* is generally issued and the acknowledgment taken before the writ of covenant is made out:

but when the cursitor prepares the writ of *covenant*, he makes it conformable to this suggestion by *testing* it before the *teste* of the *dedimus*.

(e) This suggestion is mostly mere fiction.



this writ. (f) Witness (g) ourself at Westminster, the twenty-seventh day of May, in the third year of our reign. (h)

Peele (i).

## XVI:

### Indorsement.

By the Lord Chancellor of Great Britain ;—at the instance of the plaintiff.

E. C. (k).

Reed. vj. viij.

In. Fanshawe (l).

(f) If there should happen to be any material mistake in the writ, and the alteration required is to increase the parties or parcels, the writ must be renewed; so it must if you only want to insert the name of another commissioner: but if to lessen them, the cursitor will do it without; and so if it is only a small alteration, he will do it with only resealing the writ; and if it be the cursitor's own mistake, he will correct it of course without any further expense.

(g) The *dedimus* is tested at least fifteen days prior to the return, and is considered by the cursitor to be in force for a year, though the acknowledgments may be taken after: but then the cursitor, when he prepares the writ of

*covenant*, also makes out a new *dedimus*, which he annexes to the old one to warrant the caption. And where all the parties do not acknowledge, and the fine is to be completed as to those that have acknowledged, the cursitor, when he makes out the writ of *covenant*, strikes out the parties not acknowledging, and then renews the *dedimus*.

(h) Though the *dedimus* must not be tested prior to the writ of covenant, *Goburn v. Wright*, Cro. Elizabeth, 740; yet both writs may be tested on the same day. *Arundel v. Arundel*, ibid. 677.

(i) The cursitor's name.

(k) The Lord Chancellor's initials.

(l) The receiver of the fines in the Court of Chancery.

## XVII.

*Præcipe and Concord of a Fine, sur cognisance de droit come ceo, &c. from two cognizors, a man and his wife, to one cognizee, of the wife's estate.*

DEVONSHIRE } Command A. B., and C., his wife,  
(to wit). } that justly and without delay they  
perform to E. F. of the covenant made  
between them [*the parcels particu-  
larly described from the præcipe for  
the dedimus,*] and unless, &c.

(a) And the agreement is such (that is to say) that the said A., and C. his wife, have acknowledged the aforesaid [*the general' description of the parcels*] to be the right of him, the said E., as those which the said E. hath of the gift of the said A. and C., and those they have remised and quit claimed from the said A. and C., and the heirs of the said C., to the aforesaid E., and his heirs for ever. And, moreover, the said A. and C. have granted for them, and the heirs of the said C., that they will warrant to the aforesaid E., and his heirs, the aforesaid [*the general description of the parcels*] against them, the said A. and C., and the heirs of the said C. for ever. And for this, &c. (b)

- (a) The *præcipe* and concord to be written on unstamped parchment.      covenant, unless a concord was produced, the Court gave leave for a new one to be made, and a new acknowledgment to be taken. See *ante*, p. 77.
- (b) Where the concord was lost, and the *custos brevium* refused to mark the writ of

Taken and acknowledged (c) by  
the said A. B., and C. his wife  
at the city of *Exeter*, the  
third day of October 1815, (d)  
before us,

A. B.  
The mark of  
C. x B.  
(e)

J. K. } Commissioners'  
L. M. } signatures. (f)

[The Judge's *allocatur*  
is generally written  
here.]

---

### XVIII.

#### *Commissioners' Return of the Dedimus, to be indorsed upon it.*

The execution of this writ appears by a certain schedule (g) hereto annexed. (h)

I. K.  
L. M.

- (c) In one case the Court held that a fine could not be acknowledged in *Westminster* before commissioners, but that it must be before a Judge. *Nokes v. Styles*, *ante*, 119, note (i).
- (d) The day and year the acknowledgment was taken must be certified; and the officers of the Court are not to receive the writ of covenant without. 23 Eliz. c. 3. s. 5., *ante*, p. 196.
- (e) Where there are several cognizors, though they acknowledge separately, they must all sign under one concord, on the *same* piece of parchment. *Balch v. Phelps*, see *ante*, 121, note (r).
- (f) If the acknowledgment of one of the cognizors has been incorrectly taken, (*Anon.* 5 Taunton's Rep. 249.) or cannot be taken at all, *Sewell and Others'* case, 4 Taunt. Rep. 798., the Court will permit the fine to be completed as to those who have acknowledged it.
- (g) This was written pannel, and held to be well enough. *Earl of Bedford v. Forster*, Cro. Jac. 77.
- (h) The concord, as acknowledged, is annexed.

## XIX.

*Affidavit of the acknowledgment by a Commissioner.*

(i) In the Common Pleas.

I. K., of, &c., Gentleman, one of the attornies of his Majesty's Court of Common Pleas at *Westminster*, and one of the commissioners named in the writ of *Dedimus potestatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows A. B., and C. his wife, the cognizors named in the said fine; and that the same was duly signed and acknowledged by the said A. B., and C. his wife, in the presence of this deponent, and K. L., Gentleman, another commissioner named in the said writ, on the day and year (j) mentioned in the caption thereof; and this deponent further saith that the said A. B., and C. his wife, and also this deponent, and the said L. M. were, at the time of taking and acknowledging the said fine, all of full age and competent understanding; and that the said C. was solely and separately examined apart from his said husband, and freely and voluntarily consented to and acknowledged the said fine; and that the said A. B., and C. his wife, respectively knew the same to be a fine to pass his, her, or their estate or estates. And this deponent further saith that he, this deponent, and also the said K. L., to the best of this deponent's knowledge and belief, are attornies of his Majesty's Court of Common Pleas at *Westminster*.

I. K.

Sworn this third day of

October, 1815, before

me,

L. M., a Commissioner, &amp;c.

(i) To be written, or engrossed on parchment.

(j) It is as well to put the place

where taken also, though not absolutely required by the rules of Court.

## XX.

*General Form when made by a Commissioner.*

In the Common Pleas.

A. B., of ———, in the county of ———, one of the attornies of his Majesty's Court of ———, at Westminster, and one of the commissioners named in the writ of *Dedimus potestatem* for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows C. D., and E. his wife, and F. G., and H. his wife, the cognizors named in the said fine, and that the same was duly signed and acknowledged by the said C. D., and E. his wife, and F. G., and H. his wife respectively, in the presence of this deponent, and J. K., Gentleman, another commissioner named in the said writ, on the day and year (*k*) [*or several days and years*] mentioned in the caption [*or several captions*] thereof; and this deponent further saith that the said C. D., and E. his wife, and F. G., and H. his wife, and also this deponent and the said J. K. were, at the time of taking and acknowledging the said fine, all of full age and competent understanding; that the said E. and H. were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the said fine; and that the said C. D. and E. his wife, and F. G., and H. his wife, respectively knew the same to be a fine to pass his, her, or their estate or estates. And this deponent further saith, that the razure [*or razures, interlineation or interlineations, if any,*] appearing to be made in the body [*or caption*] of the said fine, was [*or were*] made before any of the said parties signed the same, and before the said commissioners signed the said caption [*or cap-*

(*k*) See p. 268, *ante*, note (*j*).

tions] (l). And this deponent further saith that (m) he, this deponent, and also the said J. K., to the best of this deponent's information and belief, are attornies of his Majesty's Court of ———, at Westminster. (n)  
Sworn, &c. A. B.

---

XXI.

*The like where not made by a Commissioner.*

In the Common Pleas.

A. B., of ———, in the county of ———, one of the attornies of the Court of ———, at Westminster, maketh oath and saith, that he knows C. D., and E. his wife, and F. G., and H. his wife, the cognizors named in the fine hereunto annexed; and that the said fine was duly signed and acknowledged by the said C. D., and E. his wife, and F. G., and H. his wife respectively, in this deponent's presence, and before J. K. and L. M., Gentlemen, two of the commissioners named in the writ of *Dedimus potestatem* hereunto annexed, on the day and year, &c.; and that they the said C. D., and E. his wife, and F. G., and H. his wife, and also J. K. and L. M., and this deponent were, at the time of taking the said fine, all of full age: [*&c.*

(l) Orders, Hilary Term, 17, and Trinity Term 26 and 27 Geo. 2., *ante*, page 181, 183. Although the word *obliterations* is not mentioned in these orders; yet where there are any, the Judges require them to be noticed in the affidavit.

(m) The affidavit must state what Court the commissioners are attornies of. Order, Mi-

chaelmas Term, 39 Geo. 3., *ante*, p. 190.

(n) Or, "that this deponent is an attorney of his Majesty's Court of King's Bench, at Westminster, and that the said J. K., to the best of this deponent's knowledge and belief, is an attorney of his Majesty's Court of Common Pleas at Westminster."

*as in the preceding forms]* And this deponent further saith that the said J. K. and L. M. are, to the best of this deponent's information and belief, attornies of his Majesty's Court of ———, at Westminster.

Sworn, &c.

A. B.

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## XXII.

### *Judge's Allocatur.*

Upon reading the affidavit of I. K., Gentleman, hereto annexed, of the due execution of this fine, let it pass.

R. Dallas. (a)

### *Another Form.*

Upon reading the affidavit of A. B., Gentleman, hereunto annexed, of the due execution of this fine, let it pass, notwithstanding the rasure in the [*caption, or as it may be.*]

### *Another Form.*

Upon reading the affidavit hereunto annexed, of the due execution of this fine by C. D. of A. in the county of H. Gent. (who was present at the acknowledgment thereof,) let it pass.

---

## XXIII.

### *Commissioner's return, as to acknowledgments taken abroad. (b)*

The execution of this writ, as to the acknowledgment of the within named A. B., C. B., and D. B., appears by a certain schedule hereto annexed.

J. K.

G. T.

(a) The judge's signature. For the part of the concord where the *allocatur* is generally writ-

ten, see *ante*, p. 267.

(b) See *ante*, p. 123—6.

## XXIV.

*Caption taken abroad. (c)*

Taken and acknowledged at Charleston, in the state of South Carolina, in North America, by the above named A. B., C. B., and D. B., the first day of June, 1815, before us,

J. K.

G. T.

## XXV.

*Affidavit of such caption, made by a commissioner. (d)*

G. T. of Charleston in the state of South Carolina, in North America, Merchant, and one of the Commissioners named in the writ of *Dedimus potestatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows A. B., C. B., and D. B., three of the cognizors named in the said fine; and that the same was duly signed and acknowledged by the said A. B., C. B., and D. B., respectively, in the presence of this deponent and J. L., one other of the Commissioners named in the said writ, on the day and year mentioned in the caption of the said fine, as to the acknowledgment thereof by the said A. B., C. B. and D. B.; and that the said A. B., C. B., and D. B., and also this deponent, and the said J. L., were, at the time of taking and acknowledging the said fine, all of full age and competent understanding; and that the said A. B., C. B., and D. B., and every of them, knew the same to be a fine to pass their respective estate or estates.

G. T.

Sworn at Charleston aforesaid, the first }  
day of June, 1815, before me, }

J. D., Prothonotary,  
Charleston District.

Court of Common Pleas.

(c) See *ante*, p. 123—126.(d) See *ante*, p. 124.



## XXVI.

*Notary Public's certificate of the acknowledgment.*

I, J. S. D., Notary Public, of lawful authority admitted and sworn, dwelling in the city of Charleston, in the state of South Carolina, in North America, hereby certify, that G. T., of Charleston, in the state of South Carolina, in North America, Merchant, on the first day of June, instant, was sworn, in my presence, to the truth of the affidavit hereunto annexed, by and before J. D., Esq. Prothonotary of the Court of Common Pleas for Charleston district. And I do hereby certify, that the said J. D. is Prothonotary of the said Court, and, as such, usually administers oaths; and that the name G. T., subscribed to the said affidavit, and also the name of J. D., subscribed to the jurat thereof, are of the respective proper handwritings of the said G. T. and J. D., and were respectively signed by them in my presence. In testimony whereof, I have hereunto set my hand and notarial seal, the first day of June, in the year of our Lord, 1815. (a)

(Seal)

J. S. D.  
Notary Public.

## XXVII.

*Allocatur as to the acknowledgments taken abroad.*

Upon reading the certificate of J. S. D., Notary pub-

- (a) To be written on the back of the affidavit, or on a separate piece of parchment, without any interlineation or erasure. And see *ante*, p. 123—126.

lic, hereto annexed, and the affidavit of G. T., Merchant, hereto also annexed, of the due execution of this fine by A. B., C. B., and D. B., three of the cognizors, let it pass as to them. *R. Dallas.*

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## XXVIII.

*Caption by the Commissioners in England.*

Taken and acknowledged at the parish of St. Mary, Newington, in the county of Surry, by the above-named J. S. and A: his wife, the 20th day of January, 1815, before us,

*W. H.**W. B.*

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XXIX.*Allocatur thereon.*

Upon reading the affidavit of W. H., Gentleman, hereto annexed, of the due execution of this fine, by J. T. and A. his wife, let it pass as to them.

*R. Dallas.*

## XXX.

*Petition to the Lord Chancellor for a Writ of Covenant  
of a former Term.*

A. B., T. N., and I. K. . . . . plaintiffs:  
 C. D., E. F., G. H. . . . . deforceants.  
 Of [*the parcels as described in the Dedimus.*]

To the Right Hon. the Lord High Chancellor  
 of Great Britain.

The humble petition of the plaintiffs,  
 Sheweth,

That your petitioners, by indenture dated, &c.,  
 covenanted to levy a fine as of Michaelmas term, then  
 next, and now last, of the manor of S., in the parish  
 of W., and in W. in the county of W., with the ap-  
 purtenances, and a *dedimus potestatem* was sued out  
 in the said Michaelmas term for that purpose: but your  
 petitioners living in different counties at great dis-  
 tances from each other, the commissioners empowered  
 to take the acknowledgments of such fine have not been  
 able to take the acknowledgments till very lately; and  
 the cursitor for the county of W. cannot, at this distance  
 of time, make out a *writ of covenant*, so as to make  
 the same a fine as of last Michaelmas term, without  
 your Lordship's order for that purpose.

Your petitioners, therefore, most humbly pray  
 Your Lordship, that the cursitor for the county  
 of W. may sue out a *writ of covenant* return-  
 able the first return of last Michaelmas term, so  
 that such fine may be perfected as of Michaelmas  
 term last.

And your petitioners shall ever pray, &c.

## XXXII.

*Petition to the Master of the Rolls for a Writ of  
Covenant of a former Term.*

In Chancery.

Between A. B. . . . . plaintiff,  
           C. D. and E. his wife . . . }  
           F. G. and H. his wife . . . } deforceants,  
           Of [*the parcels as described in the Dedimus.*]

To the Right Hon. the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That it having been agreed between your petitioner and the said deforceants, that a fine should be levied of certain lands and hereditaments, in the county of L., a writ of *Dedimus potestatem* was issued to take the acknowledgment of such fine, tested the thirty-first day of May, 1813

That such fine was duly acknowledged by the deforceants, C. D. and E. his wife, on the eighth day of October, 1813; and by the deforceants, F. G. and H. his wife, on the twenty-third day of January, 1814.

That the said acknowledgment of the said fine hath, till very lately, been mislaid, so that no proceedings have been had thereon, in order to perfect the same.

That your petitioner is advised the writ of covenant ought to be returnable in Trinity term, 1813: but the cursitor cannot now issue the writ with such return, without an order for that purpose.

That all the said deforceants are still living, as by the affidavit of I. K., Gentleman, appears.

Your petitioner, therefore, humbly prays Your Honour, that the cursitor of the county of L. may issue a writ of covenant between the parties of the above premises, returnable in Trinity term, 1813. And your petitioner shall ever pray, &c.

## XXXIII

*Affidavit of the Deforceants being all living.*

In Chancery. Between, &c.

I. K., of, &c., Gentleman, maketh oath, and saith, that he knows C. D. and E. his wife, and F. G. and H. his wife, the deforceants above named; and that, on the . . . . . day of . . . . . instant, they were, and now are, as this deponent believes, all living (a).

I. K. Sworn at the public office, &c.

## XXXIV.

*Præcipe for Writ of Covenant. (b)*

DEVONSHIRE, } Command A. B. and C. his wife, that  
(to wit.) } justly, &c. they perform to E. F. the  
covenant made between them of [*the particular description of the parcels*],  
and unless, &c.

Cov.—next public seal.

H—20th May, 1815.

- (a) And that the parties are still willing that the fine should pass—or, “And that the fine was not completed or proceeded in on account of,” &c.
- (b) Where a *dedimus* has previously issued, the cursitor makes out the writ from the commissioners’ return.

## XXXV.

*Writ of Covenant.*

(a) George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Devonshire (b); greeting. Command A. B. and C. his wife, that justly, and without delay, they perform to E. F. the covenant made between them concerning [*the parcels at length*]; and unless they shall so do, and the said E. shall give you security to prosecute his suit, then summon, by good summoners, the said A. B. and C. his wife, that they be before our Justices at *Westminster*, on the morrow of All Souls, to shew why they will not do it; and have you there the summoners and this writ. Witness (c) ourself at *Westminster*, the twenty-sixth day of May, in the third year of our reign (d).

*Peele (e).*

(a) Stamp 2l. 55 Geo. III. c. 184.

(b) Where the sheriff is a party, the writ is directed to the coroner. *Dons v. Smethier and another*, Cro. Charles 415.

(c) See note (g), p. 265 *ante*. The cursitor generally testes the writ of covenant the day before the teste of the writ of *Dedimus*, and it must be tested on a *dies juridicus*. There must be 15 days between the teste and return. Where the teste was after the return, it was held to be error. *Gage's*

*case*, 5 Coke's Rep. 45. But where the teste was after the *Dedimus*, it was held to be amendable. *Tindal's case*, Latch's Rep. 186.

(d) If a new writ should become necessary in consequence of any inaccuracy, &c. in the former one, the commissioners of the stamps will allow another writ-stamp for it, even though the writ should have passed through some of the offices.

(e) The cursitor's name.

## XXXVI.

*Indorsements on the Writ of Covenant.*

By *C. Flood* for the fine beneath, because it is affirmed that the within contents exceed not the yearly value of xliij. £. (a)

*C. Flood.* (b)

(c) Pledges of prosecution, { *John Doe.*  
  { *Richard Roe.*  
(d) Summoners, . . . . . { *John Denn.*  
  { *Richard Fenn.*

(e) *A. T. Esq., Sheriff.*

£. s. d.

(f) *Pr. F. iiij. vj. viij.*

(g) *G. Courthope.*

£. s.

(h) *J. H. Stanhope.*

(i) *P. F. vj. x.*

(k) *G. Canning.*

- (a) The commissioner who sets the fine, marks the value of the premises, and the amount of the postfine, towards the bottom, on the back of the writ; then the indorsing clerk makes the above entry at the top; after which the Master in Chancery belonging to the office signs his name under it as here.
- (b) The Master's signature.
- (c) The Clerk of the Return Office's indorsement.
- (d) Ibid.
- (e) Ibid.
- (f) The præfine £4. 6s. 8d.
- (g) The commissioner's signature.
- (h) Ibid.
- (i) The postfine, £6. 10s.
- (k) To forge or counterfeit the receiver's signature is a capital offence, 32 Geo. 2. c. 14.

(n) J. C.

£.

(o) xliij.

£. s.

(p) P. F. vj. 10.

J. H. Stanhope. (q)

(m)

P. F.

vj.

x.

£.

s.

(l) Michaelmas, 3rd Geo. IV.

(l) (m) The mark of the term,  
and postfine, by the clerk at  
the King's Silver Office.(n) The initials of the entering  
clerk at the Alienation Office.

(o) The annual value of the

premises, as set by the com-  
missioners, *i. e.* £43.

(p) Postfine.

(q) The commissioner's signa-  
ture.



## XXXVII.

*Rates of the Præfine by the Purchase Money.*

Purchase-money.		Fine.	
£	£	£	s. d.
From 0 to under 40	.....	0	0 0
40	.....100	0	6 8 (a)
100	.....150	0	10 0 (b)
150	.....200	0	13 4 (c)
200	.....250	0	16 8
250	.....300	1	0 0
300	.....350	1	3 4
350	.....400	1	6 8
400	.....450	1	10 0
450	.....500	1	13 4
500	.....550	1	16 8
550	.....600	2	0 0
600	.....650	2	3 4
650	.....700	2	6 8
700	.....750	2	10 0
750	.....800	2	13 4
800	.....850	2	16 8
850	.....900	3	0 0 (d)

(a) A noble.

(b) An angel.

(c) A mark.

(d) And so on at the rate of  
3s. 4d. for every £50 more.

## XXXVIII.

*Rates of the Præfine, by the annual Rack-Rent.*

	Rent.				Rent.				Fine.		
	£.	s.	d.		£.	s.	d.		£.	s.	d.
From	0	0	0	to under	3	6	8	...	0	0	0
	3	6	8	.....	12	10	0	...	0	6	8
	12	10	0	.....	25	0	0	...	0	10	0
	25	0	0	.....	33	6	8	...	0	13	4
	33	6	8	.....	41	13	4	...	0	16	8
	41	13	4	.....	50	0	0	...	1	0	0
	50	0	0	.....	58	6	8	...	1	3	4
	58	6	8	.....	66	13	4	...	1	6	8
	66	13	4	.....	75	0	0	...	1	10	0
	75	0	0	.....	83	6	8	...	1	13	4
	83	6	8	.....	91	13	4	...	1	16	8
	91	13	4	.....	100	0	0	...	2	0	0
	100	0	0	.....	108	6	8	...	2	3	4
	108	6	8	.....	116	13	4	...	2	6	8
	116	13	4	.....	125	0	0	...	2	10	0
	125	0	0	.....	133	6	8	...	2	13	4
	133	6	8	.....	141	13	4	...	2	16	8
	141	13	4	.....	150	0	0	...	3	0	0 <sup>(a)</sup>

(a) And so on, at the rate of 3s. 4d. for every 8l. 6s. 8d. more.

## XXXIX.

*Rates of the Praefine, by the number of acres.(a)*

Acres.	Acres.	£.	s.	d.
From 0 to under 60.....	60.....	0	6	8
60.....	100.....	0	10	0
100.....	133.....	0	13	4
133.....	166.....	0	16	8
166.....	200.....	1	0	0
200.....	233.....	1	3	4
233.....	266.....	1	6	8
266.....	300.....	1	10	0
300.....	333.....	1	13	4
333.....	366.....	1	16	8
366.....	400.....	2	0	0
400.....	433.....	2	3	4
433.....	466.....	2	6	8
466.....	500.....	2	10	0
500.....	533.....	2	13	4
533.....	566.....	2	16	8
566.....	600.....	3	0	0
600.....	633.....	3	3	4 (b)

(a) Land, meadow, and pasture.

first 33's and the last 34 of  
every hundred acres more.(b) And so on, at the rate of  
3s. 4d. for each of the two

## XL.

*Affidavits of the Rent, Value, &c.*

In the Common Pleas.

YORKSHIRE, } Command A. B., and C. his wife, that  
 [to wit.] } justly, &c. they perform to D. E., the  
 covenant made between them, of [*the  
 parcels as they stand in the writ of co-  
 venant :*] and unless, &c.

Rent, land-  
 tax paid by  
 the land-  
 lord.

(a) F. G., of, &c. Gent., (b) maketh oath and saith,  
 that the annual rack-rent of the above premises, in-  
 cluding the land-tax, which is paid or allowed thereout  
 by the landlord, doth not exceed the sum of ———  
 pounds.

Sworn, &c. (c)

F. G.

Tenant.

That the clear annual rent of the above premises,  
 exclusive of the land-tax, which is paid by the tenant,  
 doth not exceed the sum of ——— pounds.

(a) Printed forms of the af-  
 fidavit may be had of the  
 office-keeper for six-pence  
 each.

(b) The affidavit may be made  
 by any person who can speak  
 to the fact: but no affidavit  
 will be received after the fine

has been paid, nor will a sup-  
 plementary affidavit be in any  
 case received.

(c) In the country, it may be  
 sworn before a commissioner;  
 in town, before a judge, or in  
 Court.

That the whole rent of the above premises doth not exceed ——— pounds, and that the land-tax hath been redeemed. Redeemed.

That the annual rack-rent of the above premises, exclusive of the manors, doth not exceed ——— pounds. Rack-rent, exclusive of manors.

That the above premises are untenanted; and that they would not produce, at an annual rack-rent, more than ——— pounds. Estimated rack-rent.

That part of the above premises is let at a rack rent of ——— pounds *per annum*; and the warehouse produceth no rent at all; and that the rest is in hand, and if let at a rack-rent, would not exceed ——— pounds *per annum*. Part at rack-rent, part no rent, &c.

That the gross annual rent of the whole of the above premises, of which one-sixth only is intended to be passed, doth not exceed ——— pounds. The gross rent of the whole: of which one-sixth is to pass.

That the clear rent of part of the above premises doth not exceed ——— pounds; that the gross rent of the remainder doth not exceed ——— pounds; and that the above are the rents of the whole, of which one-fifth only is to pass by this fine. The clear rent of part, and gross rent of the remainder; of which one-fifth is to pass.

Average  
profit of  
mines.

That the mines above mentioned have not, for the last seven years, upon an average, produced an annual profit or income of more than ——— pounds.

---

Mines not  
worked.

That there are no mines of coal now working; nor has there been, for seven years last past, any worked, on the above premises.

---

Of no  
value.

That the above mines are of no value.

---

Ferry dis-  
used.

That the above ferry is disused and unproductive.

---

Average  
profit of  
fisheries.

That the average annual profit arising from the fisheries above mentioned doth not exceed ——— pounds.

---

Mill pro-  
ducing no  
profit.

That the above draining mills never produced any profit.

---

Wharf, &c.  
unproduc-  
tive.

That the above wharf and quay are unproductive.

## XLI.

In the Common Pleas.

Between D. E. \_\_\_\_\_ plaintiff,

and

A. B. and C. his wife, \_\_\_\_\_ deforceants.

MIDDLESEX, } Of [the parcels as they stand in the  
(to wit.) } writ of covenant.]

F. G. of, &c., Gent., maketh oath and saith, that Purchase-money.  
the purchase-money of the above premises is \_\_\_\_\_  
pounds, and no more (a).

That the purchase-money of the whole of the above Of the  
premises is \_\_\_\_\_ pounds; of which one-fifth only is whole; of  
intended to pass by this fine. which one-fifth is to  
pass.

That the value of the whole premises, intended to be Value.  
passed by these fines, is \_\_\_\_\_ pounds, and no  
more.

That it cannot be ascertained, in which of the two Uncertain  
counties of O. and G. the greatest part of the premises in which  
in the above fines is situated (a). county the  
greatest  
part is.

That none of the buildings above mentioned are in Buildings  
the city of R. not in a  
city.

That only one of the messuages contained in this Part only  
writ is situated in the city of R. in a city.

(a) Or "that the purchase-money of the fee simple of  
the premises contained in this writ is \_\_\_\_\_ pounds."  
(a) This is where a fine is levied of a rent, charged on  
premises in two counties; in  
which case the commissioners  
divide the fine upon the  
whole, between the two writs.

**What parts are in market towns.** That of the abovementioned premises only sixty-two of the messuages are in market-towns.

---

**A former fine within a year.** That a former fine of the above premises was passed in Michaelmas term last.

---

**No consideration.** That this fine is levied for the sole purpose of discharging the above premises from the rent above mentioned, it being agreed that other premises of equal value shall stand as a security for the same ; and that the cognizors have not, nor hath either of them, received, nor are they, or either of them, to receive any consideration, money, or allowance for passing this fine.

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**Rectifying a mistake.** That this fine is levied for the purpose of rectifying a mistake in a former fine for the same premises, which was passed in last Michaelmas term, and for no other purpose.

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**Former writ of covenant lost.** That a fine of the above premises passed the Alienation Office, in Hilary term last, of the same premises, and between the same parties ; but that the writ of covenant thereof having been lost, such fine, on that account, was not completed, and therefore the present fine is being passed.

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**Omission.** That the rent charge contained in this fine is the same of which fines were passed in the counties of W. and L. of last Trinity term ; and that the present fine was omitted, by mistake, to be passed at that time.



## XLII.

*Order of a Judge to amend the præcipe at the head of the concord.*

Between W. G. Plaintiff, T. M. and M. his wife, Deforceants, Concerning certain lands, &c.	Upon inspecting the writs of <i>covenant</i> and <i>dedimus potes-</i> <i>tatem</i> , and the <i>præcipe</i> and <i>concord</i> for levying a fine be- tween the parties concerning the premises specified in the margin, whereby it satisfactorily appears that the word "Buckinghamshire" hath been inserted by mistake at the commencement of the <i>præcipe</i> , I order that the said fine may be amended, by striking out the word "Buckinghamshire," and inserting in the stead thereof the word "Hertfordshire;" and that the said fine, when so amended, do pass through the several offices, dated the 26th day of April, 1816.
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*J. A. Park (a).*

(a) If, in the course of the proceedings to perfect the fine, a mistake should be discovered, and it can be clearly shewn that it is a mere mis-

take, a judge at chambers will, in most cases, make a similar order to the above to amend it.

## XLIII.

*Warrant of Attorney.*

(b) In the Common Pleas.

Michaelmas term, in the fifty-fourth year of the reign of King George the Third (c).

DEVONSHIRE, to wit.—E. F. (the cognizee) puts in his stead W. H., his attorney, to prosecute his *writ of covenant* against A. B. and C. his wife, of [*the parcels as they stand in the writ of covenant.*]

20th November, 1814.

W. H.

## XLIV.

*Custos Brevium's Indorsement.*

Proclaimed Michaelmas term, fifty-fourth George III., 1814.

## XLV.

*Caveat to stop the Fine.*

Michaelmas term, 55 Geo. III.

OXFORDSHIRE.—Caveat against any fine by A. B.—Notice to be given to C. D. Lincoln's Inn, 5th December, 1814.

## XLVI.

*Order of Court for the King's Silver to retain the Fine until further Order.*

In the Common Pleas.

Trinity term in the fifty-third year of the reign of King George III.

Between W. A. \_\_\_\_\_ Plaintiff;

T. B. and G. his wife, H. F. and B. his wife, T. S. and E. his wife, and I. W. and E. his wife, Deforceants.

(b) To be written or ingrossed (c) The term the writ of covenant is returnable.  
on parchment.

*Of three messuages, &c. in the parish of H., in the county of Y.*

Monday, 5th July.—It is ordered, that the clerk of the Office of the King's Silver of this court, upon notice of this rule to be given to him or his deputy, do retain in his hands the abovementioned fine, until the further order of this court, any former rule, order, or other practice of this court, to the contrary in anywise notwithstanding.

On the motion of Serjeant Clayton on the part of the abovementioned I. W. and U. his wife.

By the Court.  
*Lodington.*

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XLVII.

*Order of Court discharging an order for the King's Silver to retain the Fine, and for it to pass.*

In the Common Pleas.

Michaelmas Term in the fifty-fourth year of the reign of King George the Third.

Between W. A. \_\_\_\_\_ Plaintiff;

T. B. and G. his wife, H. F. and B. his wife, T. S. and E. his wife, and I. W. and E. his wife, Deforceants.

*Of three messuages, &c.*

Monday, 29 Nov. Upon reading a rule made in this cause on Monday the 5th day of July, in Trinity Term last, the affidavit of T. S. and on hearing counsel, on both sides; It is ordered that upon payment of the proper Alienation Office fines and fees, if any, the said rule be discharged. And that this fine be permitted to pass through the several offices; any rule or order of this Court to the contrary in any wise notwithstanding.

On the motion of Serjeant Best, for the plaintiff, By the Court.  
*Lodington.*

Serjeant Shepherd for the deforceant.

## XLVIII.

*Order of the Judge for the fine to pass, as to surviving cognizors.*

C. D., and E. his wife,      Upon reading the affidavit  
    cognizors,      of A. B., by which it appears  
    and      that, since the acknowledg-  
    E. F.,      ment of the said fine, the  
    cognizee.      said C. D. is dead, I order  
 that the said fine do pass through the several offices as  
 to the survivor.      Dated, &c.      F. Buller.

## XLIX.

*Affidavit that the cognizors are living.*

In the Common Pleas.

F. G. of, &c. Gentleman, one of the commissioners named in the *Dedimus potestatem*, for taking the acknowledgment of the fine, hereunto annexed, maketh oath and saith, that he knows A. B., and C. his wife, the cognizors named in the said fine, and that the said A. B. and C. his wife are now living. (a)  
 Sworn, &c.      F. G.

(a) The Judge usually grants the order upon the affidavit, that the parties are living: indeed Mr. Justice Chambre, on the 1st January 1815, in a case of *Waters v. Smith and Others*, granted the order up-

on the common affidavit, that the parties were alive, although it appeared that the acknowledgment had been taken nearly ten years before. Sometimes, however, a reason for the delay is required.

## L,

*Affidavit that the cognizors are living, (a second form).*

In the Common Pleas.

SURRY (*to wit*). Command A. B. and C. his wife, and D. E. and F. his wife, that justly, &c. they render to G. H. *one mesuage, &c.*

I. K. of, &c. one of the attornies of his Majesty's Court of King's Bench at Westminster, and one of the commissioners before whom the abovementioned fine was taken and acknowledged by all the cognizors, maketh oath and saith, that he knows the said A. B. and C. his wife, and D. E. and F. his wife, and that they are all now living.

The following have been allowed as sufficient:—and this deponent further saith, that the delay has arisen in consequence of the severe illness of A. B., one of the cognizors whose acknowledgment could not be taken before;—that the delay has been occasioned by the death of the said A. B., one of the commissioners who took the said acknowledgments, when the documents were mislaid, and not found

until lately;—that the proceedings were mislaid, owing to the said A. B., one of the commissioners who took some of the acknowledgments, having removed from his then residence, when they were put by with others, and could not be found before;—that the documents have been accidentally mislaid, and could not be found until very lately:—but see note (s) p. 95. *ante*.

## LI.

*Affidavit that the cognizors are living, (a third form.)*

In the Common Pleas.

BUCKINGHAMSHIRE to wit. Command, &c.

F. G. of, &c, Gentleman, maketh oath and saith, that he knows the abovenamed cognizors A. B. and C. his wife, and that they are both living as he verily believes, having seen the said A. B. on the 26th day of May instant, and having also seen the said C. B. his wife, on the 28th day of May instant. (a)

## LII.

*Order of a Judge for the Fine to pass after the twelvemonth.*

<p>A. B. <i>cognizor</i>, and C. D. <i>cognizee</i> <i>concerning certain</i> <i>lands and tenements</i> <i>with the appurtenances</i> <i>in G., H., I., and K.</i></p>	<p>Upon reading the affidavit of E. F., Gentleman, whereby it appears that the <i>cognizors</i> are living, I order that the fine do pass the King's Silver Office; (b) although it appears to have been acknowledged more than twelve calendar months. Dated the 22nd day of January 1816.</p>
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*R. Dallas.*

- (a) It must be within ten days, see note (k) p. 136, *ante*.  
(b) These are the words of the order of Easter Term, 36 Geo. III. See *ante*, 189. but

the Judges' Clerks commonly draw up the order for the fine to pass "through the several offices."

## LIII.

*Order of Court for the fine to pass after the twelve-month.*

In the Common Pleas.

Easter Term, in the fifty-fifth year of the reign of King George III.

Between G. B. \_\_\_\_\_ Plaintiff,  
And E. T. and S. his wife, and T. A. and E. his wife, \_\_\_\_\_ Deforceants.

*Of two messuages, &c.*

Monday, 8th May. Upon reading an order made by the Honourable Mr. Justice Chambre. The writ of *covenant*, the writ of *dedimus potestatem*, the *præcipe* and *concord* of the said fine. The affidavit of R. S. of the due taking thereof by the said E. T. and J. his wife, and T. A. and E. his wife, the affidavit of J. B., and on hearing counsel, It is ordered that this fine do pass any rule or order of this Court to the contrary, and notwithstanding the acknowledgments have been taken more than twelve months.

On the motion of *Serjeant Marshall* By the Court.  
for all parties. *Lodington.*

## LIV.

*King's Silver Roll.*

- (a) DEVONSHIRE to wit. E. F. giveth to the Lord the King six pounds ten shillings, for licence to accord with A. B., and C. his wife, in a plea of covenant, of [*the parcels as they stand in the writ of covenant ;*] and he hath the chirograph allowed, by agreement before H. I. and K. L., Gentlemen, by commission. (b)

## LV.

*Order of a Judge to strike the fine TANTUM out of the concord, and for it to pass only as to the fine CEO.*

*William Lowson,*  
Plaintiff,  
and  
*William Sharp and Ann*  
his wife, *Margaret Raper,*  
*Richard Trindall*  
and *Margaret* his wife,  
Deforceants.

Upon reading the concord of the fine between the said parties, it appearing that a fine SUR COGNIZANCE DE DROIT COME CEO, and A FINE SUR COGNIZANCE DE DROIT TANTUM, are comprised therein. I do order

- (a) The amount of the postfine is put in figures in the margin, opposite the county, thus ; 6l. 10s.  
(b) If before the Chief Justice,

“ before *Sir Vicary Gibbs, Knight*, Chief Justice Common Bench.” If in Court, “ by *Serjeant Shepherd*, pleader.”



that the fine *Tantum* be struck out, and that it do pass as to the fine *Ceo* only, dated the first day of August, 1788.

*H. Gould. (a)*

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LVI.

*Order of a Judge to strike out that part of the concord, which related to the estate for life, and for the fine to pass as to the estate in fee.*

SOMERSETSHIRE to wit.

Between

Sir Stephen Nash,

Knight, plaintiff,

and

*William Hall Wil-*

*loughby* Esquire, and

*Mary* his wife, and

*Rowland Phillips*, Clerk,

and *Jane Margaret* his wife, deforceants.

*Of four messuages, &c.*

Of four messuages, &c. estate in fee, I do order that the chirographer do strike out that part of the concord which relates to the said estate for life; and that the said fine do pass as to the estate in fee only. Dated the 15th day of October 1787.

Upon reading the *præcipe* and *concord* of a fine between the said parties, and it appearing that the said annual rent of one hundred and twenty pounds issuing out of the premises as mentioned in the margin is only an estate for life; and that the other messuages and premises is an estate in fee, I do order that the chirographer do strike out that part of the concord which relates to the said estate for life; and that the said fine do pass as to the estate in fee only. Dated the 15th day of October 1787.

*H. Gould.*

(a) This and the two following orders were made in consequence of the chirographer declining to engross the fines, until the concords in the two first cases, and the warranty in the other, were corrected and made conformable to the practice of his of-

fice. The Court will not permit two fines, as a fine *sur cognizance de droit come ceo* and *de droit tantum*, to be united in one, *Lazenby v. Knight*, Barnes's notes 216. *Prideaux v. Gifford et ux.*, 1 Marsh 422. *Moore v. Sharp and wife*, 5 Taunt. 631.

## LVII.

*Order of a Judge to amend the warranty, by making it to the heirs of one of the cognizors.*

<p>B. Esquire, against R. Esquire and wife.</p>	<p>Upon reading the concord of the fine between the said parties, it appearing that the warranty is made to their heirs, instead of the heirs of one of the cognizors, I do order that the same be amended by striking out their heirs, and inserting, instead thereof, the heirs of one. Dated the 13th day of February 1776.</p>
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*W. Blackstone.*

## LVIII.

*Indentures of a fine, SUB COGNIZANCE DE DROIT COME CRO, &c. from two cognizors a man and his wife, of the wife's estate, to one cognizee.*

(a) THIS IS THE FINAL AGREEMENT, made in the Court of our Sovereign Lord the King, at *Westminster*, on the morrow of All Souls, (b) in the fifty-fourth year of the reign of King George the Third, by the grace of

(a) An immaterial variance in the engrossment, from the concord, signifies nothing. *Argenton v. Westover and Another*, Cro Elizabetb 375.

(b) The return of the writ of covenant; and though the cognizor should die on the return day, yet the fine will be good. See *Shelley's case*, 1 Coke's Rep. 93, b.

God, of the United Kingdom of Great Britain, and Ireland, King, Defender of the Faith, before *James Mansfield, John Heath, Alan Chambre, and Robert Dallas*, Justices of our Lord the King, and others, then and there present, between E. F., plaintiff, and A. B. and C. his wife, deforceants (c), of [*the parcels at length*], whereupon a plea of covenant was summoned between them in the same court, that is to say (d), “that the aforesaid A. and C. have acknowledged the aforesaid [*the general description of the parcels*], to be the right of him, the said E., as those which the said E. hath of the gift of the said A. and C., and those they have remised, and quit-claimed from them the said A. and C. and their heirs, to the aforesaid E. and his heirs, for ever. And, moreover, the said A. and C. have granted for them, and the heirs of the said C., that they will warrant (e), to the aforesaid E. and his heirs, the aforesaid [*the general description of the parcels*], against them the said A. and C., and the heirs of the said C., for ever.” And, for this acknowledgment, remise, quit-claim, warranty (f), fine, and agreement, the said E. hath given to the said A. and C. one hundred and fifty pounds (g) sterling.

(c) If it be a double fine, the parcels are described thus: “of one messuage with the appurtenances in the parish of A., in the county of B., and of one messuage with the appurtenances, in the parish of C., in the county of D.”

(d) The part within inverted commas is to be conformable to the concord.

(e) A fine may be good without a warranty, 1 *Preston's Conv.* 290; it therefore may be omitted where the cognizor

does not mean to warrant the title; but otherwise the warranty is always inserted. *Hargrave and B.'s Co. Litt. note 171. book ii.*

(f) *Warranties*, if there be more than one.

(g) This is a nominal sum; its amount is governed by the fine set by the commissioners at the Alienation Office, and which the chirographer himself inserts in the indentures, as a matter of form.

## LIX.

*Note of the Fine.*

DEVONSHIRE to wit, between E. F. plaintiff, and C. D. and E. his wife, deforceants, of [*the particular description of the parcels*]. Whereupon a plea of covenant was summoned between them, that is to say, that the aforesaid A and C. have acknowledged the aforesaid [*the general description of the parcels*] to be the right of him the said E. [*so through the concord including the warranty*]. And for this acknowledgment, remise, quit-claim, warranty, fine, and agreement, the said E. hath given to the said E. and C. [*one hundred and fifty pounds*] sterling.

## LX.

*The Chirographer's record of the Proclamations.*

The first proclamation was made the eleventh day of November, in Michaelmas term, in the fifty-fourth year of the King within written.

The second proclamation was made the first day of February, in Hilary term, in the fifty-fourth year of the King within written.

The third proclamation was made the tenth day of May, in Easter term, in the fifty-fourth year of the King within written.

The fourth proclamation was made the first day of July, in Trinity term, in the fifty-fourth year of the King within written (a).

(a) This is engrossed on the foot.

LXI.

*The Chirographer's Court Table.*

FINES engrossed and proclaimed of Michaelmas term, in the fifty-fourth year of the reign of George III., by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord 1814.

BEDFORDSHIRE.

Between A. B., plaintiff, and C. D. (a) in E. (b), &c.

BERKSHIRE.

Between F. G., plaintiff, and H., I., and K., &c. (a), in L. (b).

BUCKINGHAMSHIRE.

Between M. O., plaintiff, and P., Q., and R., &c. (a), in S. (b), &c.

CAMBRIDGESHIRE.

Between T. U., plaintiff, and V., W., and X., in Y.

DEVONSHIRE.

Between A. B., plaintiff, and C. D., and E., in F. &c. (c)

(a) The parties' names.

(b) The names of the places where the parcels lie.

(c) So through all the counties, cities, and towns, in which there were any fines levied.

## LXII.

*Indentures of a fine sur cognizance de droit come ceo, &c., from two cognizors, a man and his wife, of the husband's estate to one cognizee, where it is not engrossed in the term in which the writ of covenant is returnable.*

THIS IS THE FINAL AGREEMENT made in the Court of our Sovereign Lord the King at Westminster, on the morrow of All Souls (a), in the fifty-fourth year of the reign of King George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, before *James Mansfield, John Heath, Alan Chambre, and Robert Dallas*, and afterwards in eight days of the Purification of the Blessed Mary (b), in the aforesaid year of the reign of the said King George, there allowed and recorded before the same Justices of our Lord the King, and others then and there present, between D. E., Gentleman, plaintiff, and A. B., Esquire, and C., his wife, deforceants, of [the parcels at length]; whereupon a plea of covenant was summoned between them in the same Court, that is to say, "that the aforesaid A. and C. have acknowledged the aforesaid [the general description of the parcels] to be the right of him the said D., as those which the said D. hath of the gift of the aforesaid A. and C., and those they have remised and quit-claimed from them, the said A. and C. and their heirs, to the

(a) The return of the writ of covenant.

(b) If the fine be not engrossed in the term the writ of co-

venant was returnable, then this return is in the term in which it is engrossed.

“aforesaid D. and his heirs, for ever. And, moreover, the said A. and C. have granted, for them and the heirs of the said A., that they will warrant to the aforesaid D. and his heirs the aforesaid [*the general description of the parcels*], against them, the said A. and C., and the heirs of the said A., for ever.” And, for this acknowledgment, remise, quit-claim, warranty, fine, and agreement, the said D. hath given to the aforesaid A. two hundred pounds sterling (c).

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 LXIII.

*Order of a Judge to amend a fine.*

T. H. B. plaintiff M. B. Widow, defendant, <i>Concerning one mes-          suage, &amp;c.</i>	Upon reading the indentures of fine, levied between the parties in the term of the Holy Trinity, in the 53d year of the reign of King George III., and the affidavits of H. S. and I. D., whereby it appears that the name of one of the parishes wherein the premises are described by this fine to be situate is T., and that the name of such parish has by mistake throughout the whole proceedings been written F.: I do order that the Indentures of this fine, the <i>præcipe</i> and <i>concord</i> , the writs of <i>covenant</i> and <i>dedimus</i> , together with all other entries and documents relating thereto, be amended in the several offices, through which the same have passed, by inserting the word T., as the name of one of the parishes, instead of the word F. Dated the 15th day of December 1810.
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*I. Heath.*

- (c) This is considered as a fine of the term in which the writ of covenant was returnable. *Viscount Say and Sele, v. Lloyd.*

## LXIV.

*Order of Court to amend a fine.*

In the Common Pleas.

Hilary Term in the fiftieth year of the reign of King George IH.

Between, &c. of, &c.

Thursday, 6th February. Upon reading certain Indentures of fine levied between the said parties in Hilary Term, which was in the seventeenth year of the reign of his present Majesty King George III., also certain indentures of lease and release bearing date, &c.; the release made between, &c. the affidavit of, &c. and on hearing counsel, It is ordered that the record of the said fine, the indentures thereof, and all the process and proceedings relating thereto, be amended by inserting the words &c. after the words &c. in the record, indentures, and the several process and proceedings aforesaid, upon payment of the additional fine, if any, at the Alienation Office, and all usual and customary fees at the same and the several other offices.

On the motion of *Serjeant Shepherd*  
for all parties.

By the Court.  
*Lodington.*



## LXV.

*Præcipe for a double fine.*

LONDON (*to wit*). Command A. B., and C. his wife D. E., and F. his wife, and G. H., that justly and without delay, (a) they perform to I. K. and L. M., the covenant made between them of [*the particular description of the parcels in this city.*]

MIDDLESEX (*to wit*). Command *the same*, [*naming them as above*] that justly, &c. they perform to the said J. K. and L. M., the covenant made between them, of [*the particular description of the parcels in this county.*] (b)

(a) The words, "justly, &c." having been omitted, the Court permitted them to be inserted, *Cooke's case*, 4 Taunton's Rep. 644.

(b) See *ante*, p. 93. In these double, &c. fines, the cursitor of either county will make out the *dedimus*; but though one *dedimus* will do for all

the counties, yet the charges are the same, as if separate writs were issued; and there must be separate writs of covenant; the same fees are paid at the several offices, (except for the *allocatur*,) as if there were distinct fines, on each writ of covenant.

## LXVI.

*Concord of a Fine, sur cognizance de droit come ceo, &c. from three cognizors, and the wives of two, to two cognizees; with separate warranties against the heirs of each cognizor.*

(a) AND the agreement is such, that is to say, that the aforesaid A., and C., and D., and F., and G., have acknowledged the aforesaid [*the general description of the parcels*] to be the right of him, the said I., as those which the said I. and L. have of the gift of the said A., and C., and D., and F., and G., and those they have remised and quit claimed from them, the said A., and C., and D., and F., and G., and their heirs, to the aforesaid I. and L., and the heirs of the said I., for ever. And, moreover, the said A. hath granted, for him and his heirs, that they will warrant to the aforesaid I. and L., and the heirs of the said I., the aforesaid [*the general description,*] against him, the said A., and his heirs, for ever. And, further, the said A. and C. have granted, for them and the heirs of the said C., that they will warrant to the aforesaid I. and L., and the heirs of the said I., the aforesaid [*the general description,*] against her, the said C., and her heirs, for ever. And furthermore, the said D. hath granted, for him and his heirs, that they will warrant to the aforesaid I. and L., and the heirs of the said I., the aforesaid [*the general description,*] against him, the said D., and his heirs, for ever. And also the said D. and F. have granted, for them and the heirs of the said F., that they will warrant to the aforesaid I. and L., and the heirs of the

(a) Most of these concords the compiler obtained from the acting chirographers. Others were taken from actual practice; and have undergone the

revision of the chirographer, who has corrected them agreeably to the practice of the office.

said I., the aforesaid [*the general description*,] against her, the said F., and her heirs, for ever. And, also, the said G. hath granted, for him and his heirs, that they will warrant to the aforesaid I. and L. and the heirs of the said I., the aforesaid [*the general description*,] against him the said C., and his heirs, for ever. (b) And for this, &c.

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LXVII.
*Præcipe for a treble Fine. (a)*

KENT (to wit). Command A. B., and C. his wife, D. E., and F. his wife, G. H. and I. his wife, and K. L., and M. N., that justly &c. they perform to P. Q., R. S., T. U., and V. W., the covenant made between them, of [*the particular description of the parcels in this county*,] and unless, &c.

SURREY (to wit). Command [*the same, naming the parties*] that justly, &c. they perform to the [*plaintiffs naming them*] the covenant made between them, of [*the particular description of the parcels in this county*,] and unless, &c.

SUSSEX (to wit). Command [*the same deforceants, naming them*] that justly, and, &c. they perform to [*the same plaintiffs naming them*] the covenant made between them, of [*the particular description of the parcels in this county*,] and unless, &c.

(b) As the warranty is always against the person and his heirs in whom the fee is; if it be uncertain in which of the cognizors it is, separate warranties against each may be inserted, as here.

(a) See notes on p. 305, *ante*.

## LXVIII.

*Concord of a Fine sur cognizance de droit come ceo, &c. from eight cognizors, three men and their wives, and two others, to four cognizees.*

AND the agreement is such, that is to say, that the aforesaid A. and C., D. and F., G. and I., and K., and M., have acknowledged the aforesaid [*the general description of the whole of the parcels*] to be the right of him the aforesaid P., as those which the said P., R., T., and V. have of the gift of the said A. and C., D. and F., G. and I., K. and M., and those they have remised and quit-claimed, from them the said A. and C., D. and F., G. and I., and K. and M., and their heirs, to the aforesaid P., R., T., and V., and the heirs of the said P. for ever. And, moreover, the said A. and C. have granted for them and the heirs of the said C., that they will warrant to the said P., R., T., and V., and the heirs of the said P., [*the general description of the whole of the parcels*] against them the said A. and C., and the heirs of the said C., for ever. And, further, the said D. and F. have granted for them and the heirs of the said F., that they will warrant to the said P., R., T., and V., and their heirs, [*the general description of the whole of the parcels*] against them the said D. and F., and the heirs of the said F., for ever. And furthermore the said G. and I. have granted for them and the heirs of the said I., that they will warrant to the said P., R., T., and V., and their heirs [*the general description of the whole of the parcels*] against them the said G. and I., and the heirs of the said I. for ever. And also, the said K. hath granted for him and his heirs, that he will warrant to the said P., R., T., and V., and

their heirs, [*the general description of the whole of the parcels*] against him the said K. and his heirs, for ever. And also, the said M. hath granted for him and his heirs that he will warrant to the said P., R., T., and V., and their heirs, [*the general description of the whole of the parcels*] against him the said M. and his heirs for ever. And for this, &c. (a)

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LXIX.

*Concord of a Fine sur cognizance de droit come ceo, &c. from two cognizors, a man and his wife, of the husband's estate, to two cognizees ; with a warranty against the heirs of the husband and his ancestors.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid land, with the appurtenances, to be the right of him the said E., as that which the said E. and G. have of the gift of the aforesaid A. and C., and those they have remised and quit-claimed from them the said A. and C., and their heirs, to the aforesaid E. and G. and the heirs of the said E. for ever. And, moreover, the said A. and C. have granted for them and the heirs of the said A., that they will warrant to the aforesaid E. and G., and the heirs of the said E., the aforesaid land, with the appurtenances, against them the said A. and C., and the heirs of the said A., and against the heirs of M. B. deceased, father of the said A., and against the

(a) These double, treble, &c. fines are very common : they sometimes comprise parcels in six or more counties ; not

very long since, one comprised parcels in nine counties.

heirs of N. B. deceased, grandfather of the said A., and against the heirs of O. B. deceased, great-grandfather of the said A., and against all others claiming or to claim by, from, or under the said A., M., N., and O., or either of them, for ever. And for this, &c.

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LXX.

*Concord of a joint Fine, sur cognizance de droit come ceo, &c. from four cognizors, two men and their wives, to two cognizees.*

AND the agreement is such, that is to say, that the said A. B., and C. his wife, and D. E., and F. his wife, have acknowledged the aforesaid [*general description of the whole of the parcels*] to be the right of him the said G., as those which the said G. and J. have of the gift of the said A., and C., and D., and F., and those they have remised and quit-claimed from the said A., and C., and D., and F., and their heirs, to the aforesaid G. and J., and the heirs of the said G. for ever. And moreover, the said A. hath granted, for him and his heirs, that they will warrant to the aforesaid G. and J., and the heirs of the said G. [*his separate part*] parcel of the said premises, against him the said A. and his heirs, for ever. And further, the said D. hath granted, for him and his heirs, that they will warrant to the aforesaid G. and J., and the heirs of the said G. [*his separate part*] residue of the said premises, against him the said D., and his heirs, for ever. And for this &c. (a)

(a) In this fine the cognizors may warrant their separate	part of the premises to separate cognizees.
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## LXXI.

*Concord of a Fine sur tantum, from two cognizors, a man and his wife, to one cognizee, of a reversion, the wife's estate, after the decease of another person.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid [*the general description of the parcels*] to be the right of him the said D., and have granted that the said [*the general description*] (which E. F., on the day this agreement was made, holds for the term of her life, of the inheritance of the said C., and which after the decease of the said E. ought to revert to the aforesaid C. and her heirs,) shall, immediately after the decease of the said E., wholly remain to the said D. and his heirs for ever. And, moreover, the said A. and C. have granted, for them and the heirs of the said C., that they will warrant to the aforesaid D. and his heirs the aforesaid [*the general description*] as is aforesaid, against them the said A. and C., and the heirs of the said C. for ever. And for this, &c.

## LXXII.

*Concord of a Fine, sur tantum, from two cognizors, a man and his wife, to two cognizees of a reversion, the wife's estate, after her decease, without issue male.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid [*the general description of the parcels*] with the appurtenances, to be the right of them the said E. and G., and have granted that the aforesaid, [*the general description of the parcels*] with the appurtenances, (which I. K., on the day this agreement was made, holds for the life of the said C., for her separate use; and after the decease of the said C., remainder to the first and other son and sons of her body, lawfully begotten, successively and in remainder, or one after another, as they shall be in priority of birth, and the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing, and which, after the decease of the said C., and failure of issue as aforesaid, ought to revert to the right heirs of the said C.) shall, immediately after the decease of the said C. without such son or sons, or heirs male of the body or bodies of such son or sons lawfully issuing, wholly remain to the aforesaid E. and G., and the heirs of the said E. for ever. And moreover, the said A. and C. have granted for them and the heirs of the said C., that they will warrant to the aforesaid E. and G., and the heirs of the said E., the aforesaid [*the general description of the parcels,*] with the appurtenances as is aforesaid, against them the said A. and C., and the heirs of the said C., for ever. And for this, &c.



## LXXIII.

*Concord of a fine, sur tantum, from two cognizors, a man and his wife, to one cognizee of a reversion the wife's estate, after the deceases of the cognizors without issue.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said E., and have granted that the aforesaid tenements, with the appurtenances, (which G. H., and I. K., on the day this agreement was made, holds for the term of the life of the said C., remainder to the said A. during the term of his life, remainder to all and every the child or children of the said A., on the body of the said C., lawfully begotten or to be begotten, if more than one, equally share and share alike, as tenants in common, and not as joint tenants, and the several and respective heirs of the body and bodies of all and every such child or children lawfully issuing, and which said tenements, with the appurtenances after the decease of the said A. and C., and the longer liver of them, and without such issue as aforesaid, ought to revert to the right heirs of the said C.,) shall immediately after the decease of the said A. and C., and the longer liver of them, and without such issue as aforesaid, wholly remain to the aforesaid E., and his heirs, for ever. And, moreover, the said A. and C. have granted for them, and the heirs of the said C., that they will warrant to the aforesaid E., and his heirs, the aforesaid tenements with the appurtenances as is aforesaid against them, the said A. and C., and the heirs of the said C., for ever. And for this, &c.

## LXXIV.

*Concord of a fine, sur tantum, from two cognizors, a man and his wife. to one cognisee of a reversion after the deceases of the cognizors, tenants for life and in tail, without appointment and issue.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid tenements with the appurtenances to be the right of him the said E., and have granted that the aforesaid tenements with the appurtenances (which the said A., on the day this agreement was made, holds for the term of his life, remainder to the said C., for the term of her life, remainder to the issue of the said A., by the said C., as the said A. and C., by any deed or writing, under their hands and seals, shall limit and appoint; and, for want of such limitation or appointment, remainder to the children of the said A. and C., as tenants in common, and which after the several deceases of the said A. and C., and the longer liver of them, without such limitation or appointment, and without such issue as aforesaid, ought to revert to the right heirs of the survivor of the said A. and C.) shall immediately after the several deceases of the said A. and C., and the longer liver of them, without any limitation or appointment and without such issue as aforesaid, wholly remain to the aforesaid E., and his heirs for ever. And, moreover, the said A. and C. have granted for them, and the heirs of the said A., that they will warrant to the aforesaid E. and his heirs the aforesaid tenements, with the appurtenances, so as

aforesaid, against them the said A. and C., and the heirs of the said A. for ever. And, further, the said A. and C. have granted for them, and the heirs of the said C., that they will warrant to the aforesaid E., and his heirs, the aforesaid tenements with the appurtenances, as is aforesaid, against them, the said A. and C., and the heirs of the said C. for ever. And for this, &c.

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LXXV.

*Concord of a fine, sur tantum, from two cognizors, a man and his wife, to five cognizees of a reversion, the wife's estate, after the deceases of three persons without issue male.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid [*the general description of the parcels*] with the appurtenances, to be the right of him the said D., and have granted that the aforesaid &c. with the appurtenances (which F. G., on the day this agreement was made, holds for the term of his life, remainder to the first and every other son and sons of the said F., lawfully begotten or to be begotten, successively, and the heirs male of the body and bodies of all and every such son and sons lawfully issuing, and in default of such issue, remainder to H. I., for the term of his life, remainder to the first and every other son and sons of the said H. lawfully begotten or to be begotten, successively, and the heirs male of the body and bodies, of all and every such son and sons, lawfully issuing, and in default of such issue, remainder to K. L., for the term of his life, remainder to the first and every other son and sons of the said K., lawfully begotten or to be begotten, suc-

cessively, and the heirs male of the body and bodies of all and every such son and sons, lawfully issuing, and in default of such issue, ought to revert to the said C., and her heirs,) shall immediately after the several deceases of the said F. H. and K., and failure of issue as aforesaid, wholly remain to the aforesaid D., M. N., and O. P., and the heirs of the said D., for ever. And, moreover, the said A. and C. have granted for them, and the heirs of the said C., that they will warrant to the aforesaid D., M. N., and O. P., and the heirs of the said D., the aforesaid &c., with the appurtenances as is aforesaid, against them the said A. and C., and the heirs of the said C., for ever. And for this, &c.

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#### LXXVI.

*Concord of a fine, sur cognizance de droit tantum, from two cognizors, a man and his wife, to one cognizee, of a reversion, the wife's estate; of part of the premises after the deceases of the wife, and several others without issue, and of the residue after the decease of the wife's mother.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have acknowledged the aforesaid manor, tenements, and common of pasture, with the appurtenances, to be the right of him the said E., and have granted that the aforesaid manor, four messuages, four curtilages, two hundred and fifty acres of land, two hundred and fifty acres of meadow, two hundred and fifty acres of pasture, one hundred acres of wood and common of pasture, with the appurtenances in R. aforesaid, parcel of the said premises (which G. H.

widow, on the day this agreement was made, holds for the term of her life, remainder to the said C. A. daughter of the said G., and the heirs of her body, remainder to I. K., and the heirs of his body, and for default of such issue, remainder to L. M., N. O., and P. Q., and the heirs of their respective bodies, and which for default of such issue ought to revert to the right heirs of the said C.) shall immediately after the decease of the said G., C., and I., and the survivor of them, without heirs of the body of the said C., without heirs of the body of the said I., and without such children of the said L., N. and P., or heirs of their respective bodies, wholly remain to the said E., and his heirs, for ever. And have granted that two messuages, fifty acres of land, fifty acres of meadow, fifty acres of pasture, and common of pasture, with the appurtenances in S. and T. aforesaid, residue of the said premises, (which, the said G., on the day this agreement was made, holds for the term of her life, and which, after the decease of the said G., ought to revert to the said C., and her heirs,) shall, immediately after the decease of the said C., wholly remain to the said E., and his heirs, for ever. And, moreover, the said A. and C. have granted for them and the heirs of the said C. that they will warrant to the aforesaid E., and his heirs, the manor, tenements, and common of pasture aforesaid, with the appurtenances, as is aforesaid, against them the said A. and C., and the heirs of the said C., for ever. And for this, &c.

## LXXVII.

*Concord of a fine, sur concessit, from one cognizor to one cognizee, of an advowson.*

AND the agreement is such, that is to say, that the aforesaid A. hath granted to the aforesaid C. the advowson aforesaid; To have and to hold, to the said C., when it shall be next vacant, for one and the next turn only; and the said A. warrants to the aforesaid C. the advowson aforesaid, as is aforesaid, against him the said A., and his heirs, for the next turn only.

## LXXVIII.

*Concord of a fine, sur concessit, from one cognizor to one cognizee, of a rent for three joint lives.*

AND the agreement is such, that is to say, that the aforesaid A. hath granted to the aforesaid C. the aforesaid rent, to have and receive to the said C., during the joint lives of E. F., G. H., and I. K. And the said A. warrants to the aforesaid C., the aforesaid rent, as is aforesaid, against all men during the joint lives of the said E. F., G. H., and I. K. And for this, &c.

## LXXIX.

*Concord of a fine, sur concessit, from two cognizors to one cognizée, for the lives of the cognizors.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have granted to the aforesaid D. the aforesaid [*the general description of the parcells,*] and those they have rendered to him in the same Court; to have and to hold to the said D., and his heirs, during the lives of the said A. and C., and the life of the longer liver of them. And the said A. and C., and the heirs of the said A., warrant to the aforesaid D., and his heirs, the aforesaid [*the general description,*] as is aforesaid, against them, the said A. and C., and the heirs of the said A., during the lives of the said A. and C., and the life of the longer liver of them. And for this, &c.

## LXXX.

*Concord of a fine, sur concessit, from one cognizor to one cognizée for a term of years, at a pepper-corn rent.*

AND the agreement is such, that is to say, that the aforesaid A. hath granted to the aforesaid C. the aforesaid moiety with the appurtenances, and that he hath rendered to him in the same court. To have and to hold to the said C., from the sixth day of June, which was in the year of our Lord 1797, unto the full end and term of one thousand years, then next following, and fully to be complete and ended, yielding, therefore, yearly to the said A. one pepper-corn only, on the sixth

day of June, during the term aforesaid, if demanded. And the said A. warrants to the aforesaid C. the aforesaid moiety, with the appurtenances, as is aforesaid, against all men during the term aforesaid. And for this, &c.

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LXXXI.

*Concord of a fine, sur concessit, from one cognizor to one cognizee, for a term of years at a pecuniary rent.*

AND the agreement is such, that is to say, that the aforesaid A. hath granted to the aforesaid C. the aforesaid tenements with the appurtenances, and those he hath rendered to him in the same court. To have and to hold to the said C. from the feast of Saint Michael the Archangel last past, unto the full end and term of one hundred years then next following, and fully to be complete and ended, paying therefore yearly to the said A. five shillings of lawful money of Great Britain on the feast aforesaid, during the term aforesaid, if demanded. And the said A. warrants to the aforesaid C. the aforesaid tenements with the appurtenances, as is aforesaid, against him the said A., during the term aforesaid. And for this, &c.

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LXXXII.

*Concord of a fine, sur concessit, from two cognizors to three cognizees, for a term of years, at a pecuniary rent, to commence after the deceases of a man and his wife.*

AND the agreement is such, that is to say, that the aforesaid B. and D. have granted to the aforesaid F.,



H., and K., the aforesaid [*the general description of the parcels*], with the appurtenances. To have and to hold to the said F., H., and K., from and immediately after the several deceases of M. N. and O. his wife, for the term of sixty years then next following, and fully to be complete and ended, paying therefore yearly to the said B. and D., and their heirs, ten pounds of lawful money of Great Britain, on the twenty-fourth day of June and the twenty-fifth day of December, by even and equal portions during the term aforesaid. And the said B. and D. warrant to the aforesaid F. H., and K., the aforesaid [*the general description of the parcels*] with the appurtenances, as is aforesaid, against all men (a), during the term aforesaid. And for this, &c.

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LXXXIII.

*Concord of a fine, sur concessit, from two cognizors, a man and his wife, to one cognizee, for the life of one of the cognizors, at a pecuniary rent.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have granted to the aforesaid D. the aforesaid [*the general description of the parcels*], with the appurtenances. To have and to hold to the aforesaid D., from the feast of St. Michael the Archangel last past, during the life of the said C., paying, therefore, yearly to the aforesaid A. and C. twenty pounds of lawful money of Great Britain, on the feast of the Nativity of our Lord Christ, the annunciation of the Blessed Virgin Mary, the Nativity of Saint John the Baptist, and Saint Michael the Archangel, by equal portions during the life of the said C. And the said A. and C. warrant to

(a) Or, "against the said B. and D. and their heirs."

the aforesaid D. the aforesaid [*the general description of the parcels*], with the appurtenances, as is aforesaid, against them the said A. and C., during the term aforesaid. And for this, &c.

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#### LXXXIV.

*Concord of a fine, sur concessit, from two cognizors to one cognizee, of part of the premises, for three lives, and of the residue for two lives.*

AND the agreement is such, that is to say, that the aforesaid A. and C. have granted to the aforesaid E. the aforesaid tenements and common of pasture with the appurtenances, and those they have rendered to him in the same court. To have and to hold twenty acres of land, with the appurtenances, parcel of the tenements aforesaid, to the said E. and his heirs, during the lives of G. H., I. K., and L. M., and the lives and life of the survivors and survivor of them. And to have and to hold thirty acres of land and common of pasture, with the appurtenances, residue of the tenements aforesaid, to the said E. and his heirs, during the lives of N. O. and P. Q., and the life of the survivor of them. And the said A. and C. warrant to the aforesaid E. and his heirs the aforesaid tenements, with the appurtenances, the said parcel of the said premises, as is aforesaid against them, the said A. and C. and their heirs, during the lives of the said C. H., I. K., and L. M., and the lives and life of the survivors and survivor of them. And the said A. and C. warrant to the aforesaid E. and his heirs, the aforesaid tenements and common of pasture, with the appurtenances, the said residue of the said tenements aforesaid, against them the said A. and C. and their heirs, during the lives and life of the said N. O. and P. Q., and of the survivor of them. And for this, &c.

## LXXXV.

*Concord of a fine, sur done, grant, and render.*

AND the agreement is such, to wit, that the aforesaid A. hath acknowledged the aforesaid tenements to be the right of him the said B., as those which the said B. hath of the gift of the aforesaid A.; and those he hath remised and quit-claimed from himself, the said A. and his heirs for ever. And the said A. hath granted for him and his heirs, that he will warrant to the said B. and his heirs the tenements aforesaid, against him the said A. and his heirs for ever; and for this acknowledgment, remise, quit-claim, warranty, fine, and agreement, the said B. hath granted to the said A. the aforesaid tenements, &c. And this he hath rendered to him in the same court, to hold the said tenements to the said A. and the heirs of his body.

## LXXXVI.

*Returns of the Writs where the vouchee comes in by summons.*

## HILARY TERM.

## ENTRY.

1. In eight days of St. Hilary.

2. In fifteen days of St. Hilary.

3. On the mo. of the Pu. of the bl. My.

4. In eight days of the Pu. of the bl. My.

## SUMMONS. (a)

In eight days of the Pu. of the bl. My.

From Easter-day, in fifteen days.

From Easter-day, in three weeks.

From Easter-day, in one month.

## SEISIN. (a)

From Easter-day, in fifteen days.

From Easter-day, in five weeks.

On the mor. of the Asc. of our Lord.

Forthwith.

(a) The writ of *summons* is returnable on the fourth general return, inclusive, from the return of the writ of *entry*; and when there are more writs of *summons* than one, each writ is returnable on the fourth general return, inclusive, from the return of the former one; and the writ of *seisin* is returnable on the fourth general return, inclusive, from the return of the writ of *summons*: but if there be not that number of general returns left in the Term, then the writ of *seisin* is made returnable *forthwith*, unless the writ of *summons* be returnable the last return of Hilary, Trinity, or Michaelmas Term, and then the writ of *seisin* is made returnable the first return of the next Term; and if the writ of *summons* be returnable the last return of Easter Term, the writ of *seisin* is made returnable the second return of Trinity Term. And see 24 Geo. 2., c. 48.

## EASTER TERM.

ENTRY.	SUMMONS.	SEISIN.
1. In fifteen days of Easter.	In five weeks of Easter.	Forthwith.
2. In three weeks of Easter.	On the mor. of the Asc. of our Lord.	In eight days of the Holy Trinity.
3. In one month of Easter.	On the morrow of the Holy Trinity.	In three weeks of the Holy Trinity.
4. In five weeks of Easter.	In eight days of the Holy Trinity.	Forthwith.
5. On the mor. of the Asc. of our Ld.	In fifteen days of the Holy Trinity.	Forthwith.

## TRINITY TERM.

ENTRY.	SUMMONS.	SEISIN.
1. On the mor. of the Holy Trinity.	In three weeks of the Holy Trinity.	On the morrow of All Souls.
2. In eight days of the Holy Trinity.	On the morrow of All Souls.	In fifteen days of St. Martin.
3. In fifteen days of the Holy Trinity.	On the morrow of St. Martin.	Forthwith.
4. In three weeks of the Holy Trinity.	In eight days of St. Martin.	Forthwith.

## MICHAELMAS TERM.

ENTRY.	SUMMONS.	SEISIN.
1. On the morrow of All Souls.	In fifteen days of St. Martin.	In eight days of St. Hilary.
2. On the morrow of St. Martin.	In eight days of St. Hilary.	On the mor. of the Pu. of the bl. Mary.
3. In eight days of St. Martin.	In fifteen days of St. Hilary.	Forthwith.
4. In fifteen days of St. Martin.	On the mor. of the Pu. of the bl. Mary.	Forthwith.

*Returns of the Writs where all the parties appear at bar.*

## HILARY TERM.

## ENTRY.

1. In eight days of St. Hilary.
2. In fifteen days of St. Hilary.
3. On the mor. of the Purification of the blessed Mary.
4. In eight days of the Purification of the blessed Mary.

## SEISIN. (a)

- In eight days of the Purification of the blessed Mary.
- Forthwith.
- Forthwith.
- From Easter-day, in fifteen days.

## EASTER TERM.

1. From Easter-day, in fifteen days.
2. From Easter-day, in three weeks.
3. From Easter-day, in one month.
4. From Easter-day, in five weeks.
5. On the morrow of the Ascension of our Lord.

- From Easter-day, in five weeks.
- On the morrow of the Ascension of our Lord.
- Forthwith.
- Forthwith.
- In eight days of the Holy Trinity.

(e) In this case the writ of *seisin* is returnable the fourth general return from the return of the writ of entry; and if there are not general returns sufficient left in the Term, then it is, in general, returnable forthwith. But see note, *ante*, p. 324.

## TRINITY TERM.

1. On the morrow of the Holy Trinity.
  2. In eight days of the Holy Trinity.
  3. In fifteen days of the Holy Trinity.
  4. In three weeks of the Holy Trinity.
- In three weeks of the Holy Trinity.  
Forthwith.  
Forthwith.  
On the morrow of All Souls.

## MICHAELMAS TERM.

1. On the morrow of All Souls.
  2. On the morrow of St. Martin.
  3. In eight days of St. Martin.
  4. In fifteen days of St. Martin.
- In fifteen days of St. Martin.  
Forthwith.  
Forthwith.  
In eight days of St. Hilary.



*Testes of the writs.*

The writ of *summons* must be tested the fourth day, inclusive, from the return of the writ of *entry*; and where there is more than one writ of *summons*, the second must be tested, in like manner, the fourth day, inclusive, from the return of the first, and so on. The writ of *seisin* must be tested on the fourth day, inclusive, from the return of the writ of *summons*, or last *summons*, where there are more than one. But none of the writs should be tested on a *Sunday*, or other *dies non juridicus*, which are all days out of term, the *Purification*, in Hilary Term, *Ascension-day*, in Easter Term, and the *Nativity of Saint John the Baptist*, if it happen to be in Trinity Term, unless it be Friday next after Trinity Sunday. (a) In these cases, the writ should be tested on the day following.

(a) 32 Henry VIII. c. 21.

PROCEEDINGS IN A RECOVERY WITH DOUBLE VOUCHER,  
THE TENANT IN PERSON, AND THE VOUCHER BY AT-  
TORNEY.

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LXXXVII.

*Præcipe for the dedimus to take the vouchee's warrant.*

CORNWALL to wit. Command C. D., that justly and  
without delay he render to A. B., [(a) *the*  
*parcels particularly described,*] which he  
claims, &c.

Ded. (b) For E. F., and	}	to	{	K. L.,	}	Gent. (c)
G. his wife, whom				M. N.,		
C. D., vouches to				O. P.,		
warrant.....				Q. R.,		

For the next public seal.  
H.—5th April, 1825.

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LXXXVIII.

*Writ of dedimus.*

GEORGE the Fourth, by the grace of God, of the united  
kingdom of Great Britain and Ireland, King, Defender of

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|---|--|
| (a) As to the description of the<br>parcels, see <i>ante</i> , p. 263, n. (b).  | <i>tenant</i> ) vouches to warrant<br>further vouches G. H." ( <i>the</i>                                |
| (b) If the recovery is with treble<br>voucher, and it be, to take<br>the second vouchee's war-<br>rant, say, "E. F. ( <i>the first</i><br><i>vouchee,</i> ) whom C. D. ( <i>the</i> | <i>second vouchee</i> ) And if it be<br>to take the tenant's warrant,<br>say, for " <i>the tenant.</i> " |
|   | (c) See <i>ante</i> , p. 145. note (d).  |

the Faith. To our trusty and well-beloved Sir *Thomas Turton*, Baronet, (a) and to our beloved K. L., M. N., O. P., and Q. R., Gentlemen, greeting. Whereas our writ of *entry upon disseisin in le post* is depending (b) before our Justices of the Bench, between A. B. and C. D., concerning [*the parcels particularly described from the præcipe,*] in the county of Cornwall; and the said C. D., appearing in full Court, (c) before our said Justices, hath vouched E. F., and G. his wife, to warrant to him the messuage and other the premises aforesaid, with the appurtenances; whereupon our writ of summons to warrant hath issued forth (d) against the said E. and G., returnable before our Justices, from Easter-day in three weeks. And forasmuch as the said C. E. and G. are so infirm that they cannot, without the greatest bodily danger, travel to Westminster at the day in our said writ of summons to warrant contained, to do and act those things which then and there shall be expedient to be done in the same, as we are informed; (e) we, tendering the condition of the said E. and C., have given to you, or two of you, power and authority to receive the attorney or attorneys jointly or severally, whom or who the said E. and G. (f) before you, or two of you, will appoint or constitute, in

(a) This name the cursitor himself inserts: but it is mere form.

(b) The writ of *entry* is not made out until the *dedimus* is returned: but the cursitor testes it so as to make it appear to have been issued first.

(c) The tenant does not in fact appear at bar until the *dēdimus* is returned, and the writ of entry has issued.

(d) The writ of summons is not

made out until the *dedimus* is returned: but when it issues, the cursitor makes it correspond with this recital of it.

(e) This suggestion is now mere form.

(f) If a *dedimus* issue to take the warrant of three, and only two acknowledge it, the Court will give the third leave to appear in person. See the Order, App. XC.

their stead to gain or lose in the said plea, before our said Justices ; and, therefore, we command you, or two of you, that you go, in person, unto the said E. and G., if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or severally, in form aforesaid ; and, when you shall have received the said attorney or attornies, you, distinctly and plainly, without delay, certify us, in our Chancery, under your seals, or the seals of two of you, of the name or names of such attorney or attornies, sending back unto us this writ. Witness ourself at Westminster, the ninth day of April, in the sixth year of our reign.

*Appleyard. (g)*

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LXXXIX.

*Indorsement.*

By the Lord Chancellor of Great Britain, at the instance of the demandant.

*E. C. (h)*

Received vi. viii.

*John Fanshawe. (i)*

(g) The cursitor's name.

tials.

(h) The Lord Chancellor's ini-

(i) The receiver of the fines.

## XC.

*Order for one of the vouchees, who had not acknowledged the warrant, though named in the dedimus, to appear in person.*

In the Common Pleas.

Michaelmas Term, in the thirty-third year of the reign of King George the Third.

Of lands, &c. in the county of C.

K., *demandant*.

Monday, November 28.

W., *tenant*.

Upon reading the writ of

W. T., and G. his wife,

and T. T., *vouchees*.

*Dedimus potestatem* between the said parties, the affidavit of T. T., Gentle-

man, and the warrants of attorney acknowledged by the said W. T. and G. T., thereto annexed; and on hearing counsel on behalf of the said T. T. and the other vouchees, It is ordered that the appearance of the said T. T. in person be recorded, notwithstanding the said *Dedimus potestatem* issued to take the warrant of attorney jointly, with that of the said W. T. and G. T. And that the name of the said T. T. may be struck out of the warrant of attorney signed by the said W. T. and G. T., and the copy thereof.

On the motion of Mr. Serjeant

*Le Blanc* for the vouchees.

By the Court.  
Skinn.

## XCI.

*Return of the Dedimus.*

The execution of this writ appears in the schedule hereunto annexed.

K. L.

M. N.

## XCII.

*Vouchees' Warrant.*

CORNWALL to wit. Command C. D., that justly and without delay he render to A. B. [*the parcels in the præcipe and writ of entry*] which he claims, &c.

CORNWALL to wit. E. F., and G. his wife, [*the vouchees*] whom the said C. D. [*the tenant*] vouches to warrant, appoint in their stead W. H., Gentleman, and R. H., Gentleman, their attornies, (a) jointly and severally, against A. B., to gain or lose in a plea of land, &c. (b) Taken and acknowledged by the said

E. F., and G. his wife, the twentieth } E. F.  
day of April, 1825, (c) before us, } G. & F.

K. L.

M. N.

(a) These must be attornies of the Court of Common Pleas; and two should always be inserted, that if one die the other may act: but none of the commissioners is the *dedimus* will do.

(b) It is no objection to the passing a common recovery that the order of the names of the vouchees in the *præcipe* at bar and the *dedimus* varies, nor that the warrants of the several vouchees, where they do not vouch jointly, are on separate pieces of parchment. *Long d. Lea t. Woodhouse and Others v.*, 1 Bos. & Pul. 31. But though there may be several captions, yet if the voucher be joint, the acknowledgments must be in

one warrant; see *ante*, p. 147. Where the tenant appears by attorney, his warrant is as follows:—"CORNWALL to wit. C. D. [*the tenant*] puts "in his place J. K. and L. M. "Gentlemen, his attornies, "jointly and severally against "A. B. [*the demandant*], to "gain or lose in a plea of "land.

"Taken and acknowledged, ed, &c."

(c) This date must always be prior to the return of the writ of *summons*, see *ante*, p. 148.: and the day and year when the acknowledgment was taken must be certified. See 23 Eliz. c. 3. s. 5, *ante*, 196.

## XCIII.

*Affidavit of the Acknowledgment of the Warrant.*

## (a) In the Common Pleas.

K. L., of &c., Gentleman, one of the attornies of his Majesty's Court of King's Bench at Westminster, and one of the commissioners named in the writ of *Dedimus Potestatem* for receiving the attorney or attornies of E. F., and G. his wife, maketh oath and saith, that he knows the said E. F., and G. his wife, and that they and each of them did duly sign and acknowledge, in the presence of this deponent, and of M. N., another commissioner named in the said writ, the warrant of attorney, a copy whereof is hereunto annexed, on the day and year mentioned in the caption thereof; and that the said E. F., and G. his wife, and also this deponent and the said M. N. were, at the time of acknowledging and taking the said warrant of attorney, all of full age and competent understanding; and that the said G. was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged her warrant of attorney aforesaid; and that the said E. F., and G. his wife, severally knew that the said warrant of attorney was intended for the suffering of a common recovery to pass his, her, or their estate or estates. (b) And this deponent further saith that he, this deponent, and also the

(a) To be written on parchment, Order, Hilary Term, 14 Geo. 3. *ante*, p. 185.

(b) The affidavit must state that the party knew it to be for

suffering a recovery, *Bleasdale d. Alexander t. Eyres and Others v.*, 4 Taunt. Rep. 737, to pass his estate. *Mullins'* case, *ibid*, 584.

said M. N., to the best of this deponent's knowledge and belief, are attornies of his Majesty's Court of King's Bench at Westminster. (c)

K. L.

Sworn at Saint Austell, in the }  
 county of Cornwall, the twenty- }  
 second day of April, 1815, be- }  
 fore me, C. R., a Commissioner, &c.

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XCIV.

*General form, when made by a Commissioner.*

In the Common Pleas.

A. B., of ——— in the county of ——— Gentleman, one of the Attornies of His Majesty's Court of ——— at Westminster, and one of the Commissioners named in the *dedimus potestatem*, for receiving the attorney or attornies of C. D., and G, his wife, &c., maketh oath and saith, that he knows the said C. D., and G. his wife, &c.; and that they, and each (*or every*) of them did duly sign and acknowledge, in the presence of this deponent, and of F. G., another Commissioner named in the said writ, the warrant (*or warrants*) of attorney, a copy (*or copies*) whereof is (*or are*) hereunto annexed, on the day and year (*or several days and years*) mentioned in the caption (*or*

(c) The officer objected to the affidavit because the words "at Westminster" were omitted; but the Court overruled the objection. *Mander d. Hookney t. Green v.*, 5 Taunt.

Rep. 263. In a subsequent case however, a supplementary affidavit was required, inserting the words "at Westminster." *Hardy d. Prior t. Lord Romney v.*, *ibid.* 855.



*several captions*) thereof; and that the said C. D., and G. his wife, &c., and also this deponent, and the said E. F., were, at the time of acknowledging and taking the said warrant (*or warrants*) of attorney, all of full age and competent understanding; and that the said E. was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged her warrant of attorney aforesaid; and the said C. D., and E. his wife, &c. respectively knew that the said warrant (*or warrants*) of attorney was (*or were*) intended for the suffering of a common recovery to pass his, her, or their estate or estates. (a) And this deponent further saith, that the rasure (*or razures*,) interlineation (*or interlineations*,) appearing in the said original warrant (*or warrants*) of attorney was (*or were*) made before any of the parties signed the said warrant (*or warrants*,) and the rasure (*or razures*,) interlineation (*or interlineations*) appearing in the said original caption (*or captions*) was (*or were*) made before the said Commissioners signed the same. And this deponent further saith, that he, this deponent, and also the said F. G., to the best of this deponent's knowledge and belief, are Attornies of His Majesty's Court of ——— at Westminster.

Sworn, &c.

A. B.

(a) From here to be added in part, or in the whole, if any rasure, &c. in the warrant or

caption, as the case may require.

## XCV.

*The like, when not made by a Commissioner.*

In the Common Pleas.

A. B., of \_\_\_\_\_ in the county of \_\_\_\_\_ one of the Attornies of His Majesty's Court of \_\_\_\_\_ at *Westminster*, maketh oath and saith, that he knows C. D., and E. his wife, &c., and that they, and each (*or every*) of them did duly sign and acknowledge, in the presence of this deponent, the warrant (*or warrants*) of attorney, a copy whereof is hereunto annexed, on the day and year (*or several days and years*) mentioned in the caption (*or several captions*) thereof; and that they, the said C. D., and E. his wife, &c., and F. G., and J. K., Gentlemen, the Commissioners, taking the said acknowledgment (*or acknowledgments*), were, at the time of acknowledging and taking the said warrant (*or warrants*) of attorney, all of full age (*&c. as in the former affidavit*). And this deponent further saith that the said Commissioners are, to the best of this deponent's information and belief, attornies of His Majesty's Court of \_\_\_\_\_ at *Westminster*.

## XCVI.

*Judge's order for the insertion of the names of two living attornies in the warrant.*

<p>A. B., demandant. C. D., tenant. E. F., vouchee.</p>	}	<p>Upon reading the warrant of attorney for suffering a common recovery between the parties in this cause, and the copy annexed to the affidavit of the captions thereof, and G. H. and I. K., whose names are inserted therein as attornies, being dead; I order that the said warrant of attorney, and copy thereof, be amended, by inserting, in the stead thereof, the names L. M. and N. O. Dated &amp;c.</p>
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*F. Buller.*

## XCVII.

*Writ of Entry.*

(a) GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Command C. D., that justly, and without delay, he render to A. B. [*the parcels particularly described,*] which he claimeth to be *his* right and inheritance, and into which the said C. hath not entry, but after the disseisin (b) which Hugh Hunt thereof unjustly, and without judgment, hath made to the said A., within thirty years now last past, as he saith, and whereof he complaineth, that the aforesaid C. deforceth him; and unless he shall do so, and the said A. shall R. D. (c) give you security to prosecute his suit, then summon by good summoners the said C., that he be before our Justices at Westminster on the morrow of the Purification of the Blessed Virgin Mary, to shew why he will not do it; and have you there the summoners and this writ. Witness ourself at Westminster, the sixteenth day of January, in the sixth year of our reign.

(d) *Appleyard.*

(a) Stamp £2. 55 George III.

c. 184.

(b) Disseisin is putting a man out of seisin, Co. Litt. lib. 2. c. 12, 233.

(c) The judge's initials, on his granting the *allocatur*. See

*ante*, p. 151.

(d) The cursitor's name: he makes out the writ of entry from the *dedimus* return, warrant, and affidavit of the acknowledgment.

## XCVIII.

*Petition, for a writ of entry of a former term. (a)*

In Chancery.

Between A. B. \_\_\_\_\_ demandant,  
C. D. \_\_\_\_\_ tenant,  
E. F. and G. his wife \_\_\_\_\_ vouchees,  
Of [*the parcels as described in the dedi-*  
*mus.*]

To the Right Honourable the Master of the Rolls.

The humble petition of the demandant,  
tenant, and vouchees,

Sheweth,

That a warrant of attorney was taken from and acknowledged by the said vouchees, on the eighteenth day of August last, before H. L. and K. L., Gentlemen, two of the Commissioners named in the *dedimus potestatem* for receiving the attorney or attornies of the said vouchees, in order that a common recovery might be suffered between the said parties, of the aforesaid premises, in this present Michaelmas Term.

That the Solicitor employed in preparing the said warrant of attorney delivered the same, after it was so taken and acknowledged as aforesaid, to a Gentleman, an acquaintance of his, to bring up to his agent in town, for him to get the recovery completed; and such Gentleman brought the said warrant of attorney up to town accordingly, but did not arrive here till after the essoign day of this present Michaelmas Term.

(c) See *ante*, p. 150.

That the said warrant of attorney having been taken in Trinity vacation last, it is necessary that the writ of entry should be returnable in Trinity Term last: but, as the same was not bespoke with the cursitor before the essoign day of this present Michaelmas Term, he. cannot make such writ returnable of last Term, without Your Honour's order for that purpose.

Therefore, your petitioners most humbly pray Your Honour, that the Cursitor of the county of C. may issue a writ of entry between the said parties, returnable from the day of the Holy Trinity in three weeks, last past.

And your petitioner shall ever pray, &c. (*b*)

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XCIX.

*Allocatur.*

Upon reading the affidavit of K. L., Gentleman, hereunto annexed, let the vouchees' appearance by attorney be received, pursuant to the warrant above mentioned.

(*a*) *R. Dallas.*

(*b*) Answer to the petition      rant of attorney, be it as  
 " Upon reading the said war-      prayed."

(*a*) The judge's signature.

## C.

*Indorsements on the writ of entry.*

(a) By C. Flood, for the fine beneath, because it is affirmed that the within contents exceed not the yearly value of xxx. (b)

C. Flood (a).

J. S. Copley (c).

£.

ff. iiij. (d).

G. Courthope (a).

J. Smith (a).

E. C. (e). xxx (b).

(f) Pledges of prosecution { John Doe.  
Richard Roe.

(f) Summoners { John Denn.  
Richard Fenn.

(f) E. A., Esq Sheriff.

(a) See notes, page 279, &c.

(b) The sum the premises were valued at annually, i. e. £30.

(c) The Attorney-general's hand.

(d) The fine £3.

(e) The entering clerk's signature.

(f) The Sheriff's return indorsed by the clerk of the Return Office.

## CI.

*Præcipe, to pass the recovery at bar.*

In the Common Pleas.

(a) Easter Term, 6 George IV.

CORNWALL, to wit. Command C. D., that justly, &c.  
he render to A. B. [*the parcels  
as they stand in the writ of  
entry,*] which he claims, &c.

The tenant, *in person*, (b)  
vouches to warrant E. F. and  
G. his wife (c) who, by at-  
torney, vouch *George Hum-  
phrys*. (d)

(e) John Vaughan.

(e) John Vaughan.

(f) At Bar.

(f) The tenant's appearance is recorded by the  
Court.

(g) H.

(a) The term the recovery is passed at bar. (d) He is the deputy *custos bre-*

(b) Where the tenant appears by attorney, instead of *in person*, *custos brevium*; and as such is always the common vouchee.

insert here the words *by at-* (e) The serjeant's signatures.

*torney*. (f) The prothonotary's marks.

(c) See note (b) p. 334, *ante*. (g) The attorney's name.

## CII.

*Mittimus.*

GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to our Justices of the Bench, greeting. We send to you, inclosed in these presents, the tenors of our certain writ of *Dedimus potestatem*, directed to our trusty and well beloved Sir T. T., Baronet, and to our beloved K. L., and M. N., Gentlemen, for and concerning the receiving the attorney or attornies, jointly or severally, whom or who E. F., and G. his wife will constitute or appoint in their stead, before the aforesaid Sir T. T., K. L., and M. N., or two of them, against A. B., to gain or lose in a plea of land, upon our writ of *entry upon disseisin in le post*, depending before you, between the aforesaid A. and C. D., concerning [*the messuage and other the premises aforesaid*;] which same C. hath vouched the same E. and G. to warrant to him [*the general description of the parcels*;] also the return of our said writ of *Dedimus potestatem*; and likewise a warrant of attorney, received in that behalf, sent into our Chancery, and remaining on the files of the same Chancery. Commanding you, that, inspecting the said tenors, you cause further to be done therein, at the prosecution of the said A., what of right, and according to the law and custom of England, shall be meet to be done. Witness ourself at Westminster, the twenty-fifth day of April, in the sixth year of our reign.

(a) *Appleyard.*

(a) The cursitor's name.



## CIII.

*Transcript.*

GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to our trusty and well beloved Sir T. T., Baronet, and to our beloved K. L., M. N., O. P., and Q. R., Gentlemen, greeting. Whereas our writ of *Entry upon disseisin in le post* is depending before our Justices of the Bench, between A. B. and C. D., concerning [*the parcels particularly described ;*] and the said C., appearing in full Court before our said Justices, hath vouched E. F., and G. his wife, to warrant to him [*the messuage aforesaid and other the premises ;*] whereupon our writ of summons to warrant hath issued forth against the said E. and G., returnable before our Justices, from Easter-day in three weeks. And, forasmuch as the said E. and G. are so infirm that they cannot, without the greatest bodily danger, travel to Westminster at the day in our said writ of summons to warrant contained, to do and act those things which then and there shall be expedient to be done in the same, as we are informed ; we, tendering the condition of the said E. and G., have given to you, or two of you, power and authority to receive the attorney or attornies, jointly or severally, whom or who the said E. and G., before you, or two of you, will appoint or constitute, to gain or lose in the said plea, before our said Justices ; and, therefore, we command you, or two of you, that you go, in person, unto the said E. and G. if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or severally, in form aforesaid ; and, when you shall have

received the said attorney or attornies, you distinctly and plainly, without delay, certify us in our Chancery, under your seals, or the seals of two of you, of the name or names of such attorney or attornies, sending back unto us this writ. Witness ourself at Westminster, the ninth day of April, in the sixth year of our reign. *Appleyurd*. By the Lord Chancellor of Great Britain, at the instance of the demandant. E. C. The execution of this writ appears in the schedule annexed. K. L., M. N. Recd. vi. viij. *John Fanshawe*. Cornwall, to wit.—E. F., and G. H., his wife, whom C. D. vouches to warrant, appoint in their stead W. H., Gentleman, and R. H., Gentleman, their attornies, jointly and severally, against A. B., to gain or lose in a plea of land. E. F., the ✕ mark of G. F. Taken and acknowledged by the said E. F., and G. his wife, the twentieth day of April, one thousand eight hundred and twenty-five, before us, K. L., M. N.

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#### CIV.

##### *Writ of Summons.*

GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Summon, by good summoners, E. F., and G. his wife, that they be before our Justices at Westminster, from Easter-day in three weeks, (a) to warrant to C. D. [*the description of the parcels same as in the*

(a) It should be returnable the fourth return, inclusive, after the return of the writ of entry, 24 Geo. II. c. 48. But the cursitor will take care to state

the proper return in the *dedimus*, with which it must here correspond. For returns, see *ante*, 324—329.

*præcipe*,] which A. B., in our Court, before our said Justices at Westminster, claims, as his right, against the said C., by our writ of entry upon *disseisin in le post*; and whereupon the said C., in our said Court, hath vouched the said E. F. and G. to be summoned in your county, to warrant against the said C., and have you there the summoners and this writ. Witness, Sir *William Draper Best*, Knight, (b) at Westminster, the seventh day of February, in the seventh year of our reign. (c)

H.

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*Return.*

Summoners. { John Denn.  
                  { Richard Fenn.  
R. A. D., Esq. Sheriff.

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CV.

*Writ of Seisin.*

GEORGE the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Cornwall, greeting. Know you, that A. B., in our Court, before our Justices at Westminster, hath recovered his seisin against C. D., of [*the particular description of the*

(b) The chief justice of the Court if there be no chief justice.  
for the time being, or the (c) As to the *teste*, see p. 329,  
senior of the puisne judges, *ante*.

*parcels*] by our writ of *entry upon disseisin in le post*; and, therefore, we command you, that without delay, you cause full seisin (a) of the tenements aforesaid with the appurtenances [*the general description of the parcels*,] to be delivered to the said A.; and in what manner you shall have executed this our precept you make appear to our Justices at Westminster, on the morrow of the Ascension of our Lord; (b) and have you there this writ. Witness Sir *William Draper Best*, Knight, (c) at Westminster, the twenty-seventh day of April, in the sixth year of our reign. (d)

H.

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CVI.

*Return.*

By virtue of this writ, to me directed, on the fifth day of May, (e) in the year within written, I caused full seisin of [*the general description of the parcels*,]

(a) Seisin signifies possession. Co. Litt. lib. 2. s. 233.

(b) It may be returnable any return above fifteen days in the term the writ of *entry* or last *summons* is returnable: but if there be not fifteen days in the term, but more than four, it must be made returnable *forthwith*; and if there be not four days, then it must be made returnable the first return of the next

term. See the table of returns, *ante*, p. 324—329.

(c) See note (a) page 346.

(d) As to the teste, see *ante*, p. 329.

(e) This may be any day, but Sunday, between the teste and return by which a person could go from Westminster to the premises and return; though the return is sufficient, without naming the particular day. *Goodright d. Burton v. Rigby*, 5 Durnford and E.'s Rep. 177.

within specified, with the appurtenances, to be delivered to the within named A., (f) as I am within commanded.

R. A. D., Esq., Sheriff.

### ENTRY OF THE RECOVERY ON THE ROLLS.

#### CVII.

##### *Summons Roll.*

Entry returnable on the morrow of the Purification of the Blessed Virgin Mary.

(a) CORNWALL. (*to wit.*) A. B., in his proper person, demandeth against C. D. [*the particular descriptions of the parcels,*] as his right and inheritance, and into which the said C. hath not entry, but after the disseisin which Hugh Hunt thereof unjustly, and without judgment hath made to the said A., within thirty years,

Count  
against the  
tenant.

(f) In abstracts of title, the time when the writ was returnable, and the day on which the seisin was delivered, should be stated for the purpose of ascertaining the time when the legal estate was complete. 1 Preston's Con. 150.

(a) To be entered on a plea roll of the term the writ of entry is returnable, in a strong *engrossing* hand, and to be begun about the breadth of the roll, from the top, with a

margin about the width of an inch; and if the entry does not come in on the first side of the roll, though it usually does where the parcels, &c. are not uncommonly long, the lines should be continued to about two inches of the bottom, and then a similar margin should be made on the other side of the roll, and the entry continued, in like manner, on the back from the first line on the front of the roll.

&c. ; (b) And whereupon he says, that he was seised of (c) [*the general description of the parcels,*] in his demesne, as of fee and right in time of peace, (d) in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

His defence  
and award  
of sum-  
mons.

(e) And the said C. in his proper person cometh and defendeth his right, when, &c. and thereupon vouches to warrant E. F., and G. his wife, to be summoned in the county aforesaid ; let him have them here, from Easter-day in three weeks, (f) by the aid of the Court, &c. the same day is given to the parties aforesaid here, &c. ; (g) and upon this the said C. appoints in his stead (h) H. I. and K. L. (i) his attornies, jointly and severally, against the said A., to gain or lose in the plea aforesaid, &c. (k)

Appoint-  
ment of his  
attornies.

(b) No real action can be maintained on the demandant's own seisin or possession above thirty years before teste of the writ, 32 Henry VIII., c. 2. s. 3.

(c) If of manors, &c. and tithes and advowsons,—say “ the manors, tenements, and commons aforesaid, with the appurtenances, and of the tithes aforesaid in his demesne as of fee and right, and of the advowsons aforesaid as of fee and right.”—If of tithes and an advowson, say “ the tithes aforesaid in his demesne as of fee and right, and of the advowson aforesaid as of fee and right.”

(d) In real actions, the taking of the profits is always laid to be in time of peace ; that

is, when the courts of justice are open, not shut by invasion, insurrection, or rebellion. Co. Litt. lib. 3. c. 6. s. 412.

(e) New line on the summons roll only.

(f) The return of the writ of summons. See p. 346.

(g) From here, in a small hand on the summons roll.

(h) Although the tenant appears at bar, yet the entry is always thus ; but there is no actual appointment of the attornies, though he afterwards appears by one of them.

(i) Two of the prothonotaries' clerks, whose names are commonly inserted ; but any other two attornies of the Court will be as well.

(k) This roll contains all that is

## CVIII.

*Recovery Roll.*

(a) Our Lord the King hath sent to his justices of the bench here his writ of *Mittimus* closed, together with the tenors of his certain writ of *dedimus potestatem* for receiving a warrant of attorney, and the return of the same writ, and also the warrant of attorney thereupon received in these words: George the Fourth [so through the *mittimus* and transcript, word for word.] Mittimus, &c.

(b) Elsewhere, as it appears, of (c) the Term of Saint Hilary last past, upon the three hundred and seventy-fifth roll it is thus contained: Cornwall to wit. A. B., in his proper person, demandeth against C. D. [so through the summons roll, (d) and then proceed on in the same line, thus] At which day here cometh as well the said A. in his proper person as the said C., by the said H. I. his attorney, and the said E. and G., being summoned, &c. likewise come, by R. H. (e) their attorney, Recital of the summons roll.

supposed to be done in the first Term, and the recovery roll is composed of the proceedings in the second.

(a) In a small hand on a plea-roll of the Term the summons is returnable. You begin the entries on the recovery-rolls at the same distance from the top, with the same margin, and continue the lines to the same place, and the entry on the other side of the roll in the same manner, as on the

summons roll; and when the first roll is full, (for the entry of the recovery of which this is a precedent always takes two rolls, besides the summons roll,) the entry is continued and finished on the second roll in the same manner.

(b) From here, in a strong engrossing hand on the roll.

(c) Or, "this same Term."

(d) See p. 349.

(e) See his appointment, p. 334.

Appearance of the parties.

Warranty  
of vou-  
chees.

Count  
against  
them.

Their de-  
fence.

His appear-  
ance and  
warranty.

Count a-  
gainst him.

His de-  
fence.

Imparlance

and freely warrant [*the general description of the parcels*] to the said C., &c. And hereupon the said A. demandeth against the said E. and G., tenants, by their own warranty [*the general description of the parcels*] in manner aforesaid, &c. and whereupon he saith, that he was seised of [*the general description of the parcels*] in his demesne as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

(f) And the said E. and G., tenants, by their own warranty defend their right, when, &c., and thereupon further vouch to warrant G. H., (g) who is present here in Court, in his proper person, and freely warranteth to them [*the general description of the parcels*]. And hereupon the said A. demandeth, against the said C., tenant, by his own warranty, [*the general description of the parcels*] in manner aforesaid, &c. and whereupon he saith that he was seised of [*the general description of the parcels*] in his demesne, as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

(h) And the said C., tenant, by his own warranty, defendeth his right, when, &c., and saith that the said H. did not disseise the said A. of [*the general description of the parcels*] as the said A. by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.

(i) And the said A. thereupon craveth leave to imparl, and he hath it, &c.; and afterwards the said A. cometh again here-into Court in this same Term, in his proper person; and the said G., although solemnly

(f) New line on roll.

(g) The common vouchee.

(h) New line on the roll.

(i) New line on the roll.



called, cometh not again, but departed in contempt of the Court, and maketh default. Therefore it is considered that the said A. recover his seisin against the said C., of [*the general description of the parcels*] and that the said C. have of the land of the said E. and G., to the value, &c. (*k*) and further, that the said E. and G. have of the land of the said G., to the value, &c., and the said G. in mercy, (*l*) &c. (*m*) And hereupon the said A. prays (*n*) a writ of our Lord the King to be directed to the Sheriff of the county aforesaid, to cause full seisin of [*the general description of the parcels*] to be delivered to him; and it is granted to him returnable here (*o*) on the morrow of the Ascension of our Lord. † (*p*) “At which day the said A. cometh here into Court, in his proper person; and the Sheriff namely, R. A. D., Esquire, now returneth that he, by virtue of the said writ to him directed, on the (*q*) fifth day of May (*r*) in this same Term, (*s*) caused full seisin of [*the general description of the parcels*] to be delivered to the said A., as by the said writ he was commanded,” &c. (*t*)

Judgment.

Award of writ of seisin.

Return.

- (*k*) Agreeably to the doctrine of warranty, 2 Bl. Com. c. 21.      (*p*) The return of the writ of seisin.
- (*l*) The word “mercy” is always written in the margin of the roll, opposite that word in the body of it.      (*q*) Or, “seventh day of the same May.”
- (*m*) From here in a small hand on the roll.      (*r*) Or, “last past.”
- (*n*) Or, “the King’s writ.”      (*s*) Or, “did cause.”
- (*o*) Or, “forthwith, &c. Afterwards, that is to say, on the ninth day of May in this same term.”      (*t*) The awarding the writ of seisin, its execution and return, must appear on the record. *Witham v. Lewis*, 4 Br. Parl. Ca. 327.

## CIX.

*Remembrance Roll.*

(a) CORNWALL to wit. Command C. D., Gent. (*the tenant*) that justly, and without delay he render to A. B., (*the demandant*) [*the parcels as described in the writ of entry*] which he claims, &c.† Writ of entry returnable on the morrow of the Purification of the Blessed Virgin Mary, witnessed the sixteenth day of January. Pledges (b) of prosecuting, John Doe and Richard Roe. Summoners, John Denn and Richard Fenn. E. A., Esquire, Sheriff.

## CX.

*Docket Roll.*

(c) Entry in le post.

(d) Double voc. with mitts. &c.

(e) B., in person, 198.

CORNWALL.

(f) D., in person, 199.

(a) To be entered on the remembrance roll of the Term the writ of entry is returnable, in a strong engrossing hand to this mark, † and from thence in a small engrossing hand, the lines ruled about half an inch apart.

(b) Where it is not the first entry on the roll, say "Pledges and summoners as above."

(c) To be entered on the roll in a strong engrossing hand.

(d) If the preceding entry be of the same sort, then instead of the words, "entry in le post double voc." say, "the like;" and if the summons and recovery rolls be of the same term, say "summons and entry in le post, double voc. with mitts., &c." with the number of each roll.

(e) Demandant.

(f) Tenant.

## CXI.

*Exemplification.*

(a) GEORGE the Fourth, by the grace of God, of the United Kingdom of Grèat Britain and Ireland, King, Defender of the Faith, TO ALL TO WHOM these presents shall come, GREETING. KNOW YE, that, among the pleas of land inrolled at Westminster, before Sir *William Draper Best*, Knight, and his brethren, our Justices of the Bench, in the term of Easter, in the sixth year of our reign, upon the *one hundred and ninety-eighth*, and *one hundred and ninety-ninth* rolls, it is thus contained: ELSEWHERE as it appears of the term of Saint Hilary last past, upon the *three hundred and seventy-fifth* roll, it is thus contained. CORNWALL, to wit [*so through the entry on the recovery roll, (b) word for word, without leaving any breaks at the end of the counts, and then conclude the exemplification thus.*] (c) All and singular which premises, at the request of the said A., by the tenor of these presents, we have commanded to be exemplified. IN TESTIMONY whereof, we have caused our seal, appointed for sealing writs in the Bench aforesaid, to be affixed to these presents. Witness, Sir *William Draper Best*, Knight, at Westminster, the sixteenth day of May, in the sixth year of our reign.

H. (d)

(a) To be done on a fine skin of vellum or parchment, in a strong German text hand; stamp £3. 55 Geo. 3. c. 184.

(b) See page 351—3.

(c) But if the writ of seisin be not returnable till the following term, the recital of the entry of the recovery, in the

body of the exemplification, concludes with the award of the writ of seisin at this mark † in page 353, and the part dotted is written in the same hand on the label of the exemplification.

(d) Attorney's name.

## CXII.

*Indorsement of Exemplification.*

Easter Term, 6 George IV. 1825.

CORNWALL.

A. B., demandant.

C. D., tenant.

E. F., and G. his wife vouchees.

}	Exemplification
	of
	Recovery.

Rolls 198 and 199.

H

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PROCEEDINGS IN A RECOVERY WITH TREBLE VOUCHER,  
THE TENANT IN PERSON AND BOTH VOUCHERS BY  
ATTORNEY.

## CXIII.

*Writ of summons for the second vouchee.*

GEORGE the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, to the sheriff of Middlesex, greeting, summon by good summoners G. F., that he be before our Justices at Westminster from, &c. to warrant to E. F., widow, whom C. D., Gentleman, in our Court before our said Justices at Westminster, heretofore did vouch to warrant [*the parcels as in the writ of entry,*] which A. B., Gentleman, in our Court before our said Justices at Westminster, claimeth as his right by our writ of entry upon disseisin in le post, against the said C., and whereupon the said E. in our said Court hath further vouched the said G., to be summoned in your

county to warrant to the said C., and have you there the summoners and this writ. Witness Sir *William Draper Best*, knight, at Westminster [*the &c.*] (a)  
H.

## CXIV.

*Præcipe for the dedimus to take the second vouchee's warrant.*

MIDDLESEX, to wit. Command C. D., Gentleman, that justly, &c. he render to A. B., Gentleman, [*the parcels particularly described,*] which he claims, &c.

Ded. for G. F., whom E. F. widow, vouches to warrant.	}	to	{	I. K. L. M. N. O. P. Q.	Gent.
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For the next general seal.

H.

## CXV.

*Writ of dedimus to take the second vouchee's warrant.*

GEORGE the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, to our trusty and well-beloved Sir Thomas Turton, Knight, and to our beloved I. K., L. M., N. O., and P. Q., Gentlemen, greeting; Whereas, our writ of *entry upon disseisin in le post*, is depending before our Justices of the bench, between A. B., Gentleman, and C. D., Gentleman, concerning one mes-

(a) For the writ of summons, for the first vouchee, see p. 346.

suage, [*&c. the parcels,*] and the said C., appearing in full Court before our said Justices, had vouched E. F. widow to warrant to him the messuage aforesaid and other the premises with the appurtenances; thereupon our writ of summons to warrant, hath issued forth against the said E., returnable before our said Justices, [*in &c.*] at which day the said E. appearing in full Court before our said Justices, hath further vouched G. F. to warrant to her the messuage aforesaid, and other the premises with the appurtenances; whereupon our writ of summons to warrant hath issued forth against the said G. F., returnable before our said Justices, from, &c. (*a*) And, forasmuch as the said G. F. is so infirm that he cannot without the greatest bodily danger travel to Westminster, at the day in our said writ of summons to warrant contained, to do and act those things which then and there shall be expedient to be done in the same, as we are informed; we, tendering the condition of the said G. F., have given to you, or two of you, power and authority to receive the attorney or attornies, jointly or severally whom or who the said G. F., before you or two of you, will appoint or constitute in his stead to gain or lose in the said plea, before our said Justices; and, therefore, we command you, or two of you, that you go in person unto G. F., if he cannot conveniently travel to you, and receive his attorney or attornies jointly or severally in form aforesaid; and when you shall have received the said attorney or attornies you distinctly and plainly, without delay, certify us in our Chancery, under your seals or the seals of two of you, of the name or names of such attorney or attornies, sending back unto us this writ. Witness ourself at Westminster [*the &c.*]

*Appleyard.*

(a) The judgment in this recovery relates to the return of the last writ of summons.

*Sheepshanks v. Lucas*, 1 Burrows' Rep. 410.

## CXVI.

*Indorsement.*

By the Lord Chancellor of Great Britain, 'at the instance of the demandant. E. C.

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## CXVII.

*Second Vouchee's Warrant.*

MIDDLESEX, to wit. Command C. D., Gentleman, that justly, and without delay, he render to A. B., Gentleman, [*the parcels in the writ of entry,*] which he claims, &c.

MIDDLESEX, to wit. F. F., whom E. F., widow, vouches to warrant, appoints in his stead W. H., Gentleman, and R. H., Gentleman, his attornies, (a) jointly and severally against A. B. to gain or lose in a plea of land, &c.

Taken and acknowledged, &c. (b) F. G.

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## CXVIII.

*Præcipe to pass the recovery at bar.*

In the Common Pleas.

Trinity term, 6 George IV.

MIDDLESEX, to wit. Command C. D., Gentleman, that justly and without delay, he render to A. B., Gentleman, [*the parcels in the writ of entry,*] which he claims, &c.

The tenant in person vouches to warrant E. F., widow, who by attorney vouches G. F., who by attorney vouches *George Humphreys*.

(a) Any two attornies of the (b) See *ante*, p. 334.  
Court of Common Pleas.

## ENTRIES ON THE ROLLS.

## CXIX.

*First summons roll. (a)*

Entry returnable, &c.

Count  
against the  
tenant.

MIDDLESEX, to wit. A. B., Gentleman, in his proper person, demandeth against C. D., Gentleman [*the parcels as in the writ of entry,*] as his right and inheritance, and into which the said C. hath not entry but after the disseisin which Hugh Hunt thereof unjustly, and without judgment, hath made to the said A., within thirty years, &c. and whereupon he saith that he was seized of the [*the general description of the parcels,*] in his demesne, as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

His defence and  
voucher of  
the first  
vouchee.  
Award of  
summons.

Appointment of the  
tenant's attornies.

(b) And the said C., in his proper person, cometh and defendeth his right, when, &c. and thereupon voucheth to warrant E. F., widow, to be summoned in the county aforesaid. Let him have her here, [*on &c.*], by the aid of the Court, &c. the same day is given to the parties aforesaid here, &c. (c) And upon this, the said C. appoints in his stead H. I. and K. L., his attornies, jointly and severally, against the said A., to gain or lose in the plea aforesaid, &c.

(a) On a roll of Easter term.

(c) From here in small hand, on

(b) A new line on this roll only.

this roll only.



## CXX.

*Second summons roll. (a)*

Our Lord the King hath sent to his justices of the bench here his writ of *mittimus* closed, together with the tenors of a certain writ of the said Lord the King, of *dedimus potestatem*, for receiving a warrant of attorney, and the return of the same writ, and also the warrant of attorney thereupon received in these words: George the Fourth, [*here comes in the whole of the mittimus and transcript of the first vouchee's warrant of attorney, word for word, and then, on a new line, go on as under*].

First  
vouchee's  
warrant.

Elsewhere as it appears in the term of, &c. last past, upon the &c. roll, it is thus contained. Middlesex, to wit, A. B., Gentleman, in his proper person, demandeth against C. D. [*so through the entry on the first summons roll, and then continue on, in the same line, thus:*] At which day cometh here, as well the said A., in his proper person, as the said C., by the said H. I. his attorney, and the said E., being summoned, &c. likewise comes by M. N., her attorney, and freely warrants the [*the general description of the parcels*] to the said C., &c. and hereupon the said A. demandeth, against the said E., tenant by her own warranty, the [*general description of the parcels,*] in manner aforesaid, &c. and whereupon he saith that he was seized of the [*general description of the parcels,*] in his demesne, as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

Recital  
of the first  
summons  
roll.

Appear-  
ances.

Warranty  
of the first  
vouchee.

Count  
against her  
thereon.

(a) On a roll of Trinity term.

pointment; see p. 237 *ante*.

(b) This is only a nominal ap-

Her defence and voucher of the second vouchee. Award of summons.

(a) And the said E., tenant, by her own warranty, defendeth her right, when, &c. and thereupon further voucheth to warrant G. F., to be also summoned in the county aforesaid; let her have him here from, &c. by the aid of the Court, &c. the same day is given to the parties aforesaid here, &c. (b)

### CXXI.

#### *Recovery roll.*

Second vouchee's warrant, &c.

Recital of the entries on the summons rolls.

Appearances.

Our Lord the King hath sent to his Justices of the Bench here his writ of *mittimus* closed, together with the tenors of a certain writ of the said Lord the King, of *dedimus potestatem*, for receiving a warrant of attorney, and the return of the same writ, and also the warrant of attorney thereupon received in these words: George the Fourth, [*here comes in the whole of the mittimus and transcript of the second vouchee's warrant, and then, on a new line, go on as under.*]

Elsewhere as it appears of the term of &c. last past, upon the &c. roll, (c) it is thus contained. Elsewhere as it appears of the term of &c. last past, upon the &c. roll, (d) it is thus contained. Middlesex, to wit. A. B., Gentleman, in his proper person, demandeth against C. D., Gentleman, [*so through the remainder of the second summons roll, and then proceed with the entry of the recovery on the same line, thus:*]. At which day cometh here, as well the said A., in his proper person,

- (a) A new line on this roll only. commonly is, you then begin it on the following roll.  
 (b) Here, on a new line, the entry on the recovery roll may be begun; but if there be no room left, though there  
 (c) The second summons roll.  
 (d) The first summons roll.

as the said C. and E., by their attornies aforesaid, and the said G., being also summoned, likewise comes by O. P., his attorney, and freely warranteth the [*general description of the parcels,*] to the said E., &c. and hereupon the said A. demandeth, against the said G., tenant, by his own warranty, the [*general description of the parcels,*] in manner aforesaid, &c. and whereupon he saith, that he was seized of the [*general description of the parcels,*] in his demesne, as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

Warranty  
of the second  
vouchee.

Count  
against  
him.

(e) And the said G., tenant, by his own warranty, defendeth his right, when, &c. and thereupon further voucheth to warrant, (f) *George Humphreys*, who is present in his proper person, and freely warranteth to him the [*general description of the parcels;*] and hereupon the said A. demandeth against the said *George*, tenant, by his own warranty, the [*general description of the parcels,*] in manner aforesaid, &c. and whereupon he saith, that he was seized of the [*general description of the parcels,*] in his demesne, as of fee and right in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

His defence, and  
voucher of  
the common  
vouchee.

His warranty.

Count  
against  
him.

(g) And the said *George*, tenant, by his own warranty, defendeth his right, when, &c. and saith, that the said Hugh did not disseise the said A. of the [*general description of the parcels,*] as the said A., by his writ and declaration above, doth suppose, and of this he putteth himself upon the country, &c.

His defence.

(e) New line on the recovery roll. (g) Also a new line here, on this roll.

(f) Common vouchee.

Imparance. (h) And the said A. thereupon craveth leave to imparl, and he hath it, &c. and afterwards the said A. cometh again here into Court, in this same term, in his proper person; and the said *George*, although solemnly called, cometh not again, but departed in contempt of

Judgment. the Court, and maketh default. Therefore, it is considered, that the said A. recover his seisin against the said C., of the [*general description of the parcels*,] and that the said C. have of the land of the said E. to the value, &c. and further, that the said E. have of the land of the said G., to the value, &c. and furthermore, that the said G. have of the land of the said *George* to the value, &c. and the said *George*, in merey, &c. (i)

Award of seisin. And hereupon the said A. prays a writ of the Lord the King to be directed to the Sheriff of the county aforesaid, to cause full seisin of the [*general description of the parcels*] to be delivered to him; and it is granted to him, returnable here on, &c. At which day the said A. cometh here into Court, in his proper person; and the Sheriff, namely Q. R., Esq., now returneth that he, by virtue of the said writ, to him directed, on the &c. did cause full seisin of [*the general description of the parcels*] to be delivered to the said A., as by the said writ he was commanded, &c.

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CXXII.
*Exemplification.*

GEORGE the Fourth, by the grace of God, of the united Kingdom of Great Britain and Ireland, King, Defender of the Faith, TO ALL TO WHOM these pre-

- (h) A new line on this roll.      hand on this roll.  
 (i) From here, in a small

sents shall come *greeting*. KNOW YE that, among the pleas of land inrolled at *Westminster*, before Sir *William Draper Best*, Knight, and his brethren, our Justices of the Bench in the sixth year of our reign, upon the 332d and 333d rolls, it is thus contained: Elsewhere as it appears of the term of, &c., last past, upon the &c. Roll [*so through the entry on the recovery roll, without making any breaks, to*] as by the said writ he was commanded, &c. [*and then say*] All and singular which premises, at the request of the said A., by the tenor of these presents, we have commanded to be exemplified. In testimony whereof, we have caused our seal, appointed for sealing writs in the Bench aforesaid, to be fixed to these presents. Witness Sir *William Draper Best*, Knight, at *Westminster*, the &c.

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CXXIII.

*Indorsement on the Exemplification.*

Trinity Term, 6 Geo. IV.

MIDDLESEX.

B., Gent. demandant,	}	Recovery roll 508.
C., Gent. tenant,		
F., and wife, vouchees.		

PROCEEDINGS IN A RECOVERY WITH DOUBLE VOUCHER,  
THE TENANT AND VOUCHERS IN PERSON.

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CXXIV.

*Præcipe for writ of entry.*

MIDDLESEX, *to wit.* Command C. D., that justly, and without delay, he render to A. B., [*the particular description of the parcels,*] which he claims, &c.

Entry—for the next public Seal.  
H. 14 May 1825. (a)

(a) See the writ, page 339 *ante*.

## CXXV.

*Præcipe to pass the recovery at bar.*

In the Common Pleas.

Trinity Term, 6 George IV.

MIDDLESEX (*to wit.*) Command C. D., Gentleman,  
that justly, and without delay, he  
render to A. B., Gentleman, [*the*  
*parcels in the writ of entry,*]  
which he claims, &c.

The tenant *in person*  
vouches to warrant E.  
F. and G. his wife, who  
*in person* vouch *George*  
*Humphreys.*

At bar.  
*S. Shepherd.*  
H.

## CXXVI.

*Recovery Roll.*

Entry returnable on the morrow of the Holy Trinity.

MIDDLESEX, *to wit.* A. B., Esquire, in his proper  
person, demandeth against C. D., Gentleman, [*the*  
*parcels as they stand in the writ of entry*], as his right  
and inheritance, and into which the same C. hath not  
entry but after the disseisin which Hugh Hunt thereof  
unjustly, and without judgment, hath made to the

Count  
against the  
tenant.

aforesaid A., within thirty years, &c. And whereupon he saith, that he was seised of the [*general description of the parcels*], in his demesne, as of fee and right in time of peace, in the time of our Lord the present King, by taking the profits thereof to the value, &c., into which, &c., and thereof he bringeth suit, &c.

His de-  
fence and  
voucher.

And the said C., in his proper person, cometh and defendeth his right, when, &c., and thereupon voucheth

Vouchee's  
appearance  
and war-  
ranty.

to warrant E. F. and G. his wife, who are present here in Court, in their proper persons, and freely warrant the [*general description of the parcels*] to the said C., &c. and hereupon the said A. demandeth against the

Count  
against  
them  
thereon.

said E. and G., tenants, by their own warranty, [*the general description of the parcels*], in manner aforesaid, &c., and whereupon he saith, that he was seised of the [*general description of the parcels*], in his demesne, as of fee and right, in time of peace, in the time of our Lord the present King, by taking the profits thereof to the value, &c., and into which, &c. and thereof he bringeth suit, &c.

Their de-  
fence and  
voucher of  
the com-  
mon vou-  
chee.  
His ap-  
pearance  
and war-  
ranty.

And the said E. and G., tenants, by their own warranty, defend their right, when, &c., and thereupon further vouch to warrant *George Humphreys*, who is also present here in Court, in his proper person, and freely warranteth to them the [*general description of the parcels*], &c. and hereupon the said A. demandeth against the said *George* tenant by his own warranty, the [*general description of the parcels*], in manner aforesaid, &c., and whereupon he saith, that he was seised of the [*the general description of the parcels*], in his demesne, as of fee and right in time of peace, in the time of our Lord the present King, by taking the profits thereof to the value, &c., and into which, &c., and thereof he bringeth suit, &c.

Count  
against him  
thereon.

His de-  
fence.

And the said *George*, tenant by his own warranty, defendeth his right, when, &c. and saith, that the said



C. did not disseise the said A. of the [*general description of the parcels*], as the said A, by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.

And hereupon the said A. craveth leave to imparl, and he hath it, &c., and afterwards the said A. cometh again here into Court, in this same term, in his proper person; and the said *George*, although solemnly called, cometh not again, but departed in contempt of the Court, and maketh default. Therefore, it is considered that the said A. recover his seisin against the said E., of the [*general description of the parcels*], and that the said C. have of the land of the said E. and G., to the value, &c., and further, that the said E. and G. have of the land of the said *George*, to the value, &c., and the said *George*, in mercy, &c. And hereupon the said A. prayeth a writ of the Lord the King to be directed to the Sheriff of the county aforesaid, to cause full seisin of the [*general description of the parcels*] to be delivered to him; and it is granted to him, returnable here in three weeks of the Holy Trinity, &c. At which day the said A. cometh here into Court, in his proper person; and the Sheriff, namely, H. I., Esq., and K. L., Esq., now returneth, that he, by virtue of the said writ, to him directed on the thirteenth day of June in this same Term, did cause full seisin of the [*general description of the parcels*] to be delivered to the said A., as by the said writ he was commanded, &c.

Imparl-  
ance.

Judgment.

Award of  
seisin.

Return.

## CXXVII.

*Exemplification.*

GEORGE the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King,

Defender of the Faith. To ALL TO WHOM these presents shall come *greeting*. KNOW YE, that among the pleas of land enrolled at Westminster, before Sir William Draper Best, Knight, and his brethren, our Justices of the Bench, of the term of the Holy Trinity, in the sixth year of our reign, upon the five-hundred and second roll, it is thus contained: ENTRY returnable on the morrow of the Holy Trinity. MIDDLESEX, to wit. A. B. [*so through the entry of the recovery, word for word, without any new lines, to,*] as by the said writ he was commanded, &c. [*and then conclude thus*]: All and singular which premises, at the request of the said A., by the tenor of these presents, we have commanded to be exemplified. In testimony whereof, we have caused our seal, appointed for sealing writs in the Bench aforesaid, to be fixed to these presents. Witness Sir William Draper Best, Knight, at Westminster, the twenty-second day of June, in the sixth year of our reign.

Examined. (a)

Clerk of  
the Treas-  
ury's  
certificate.

Rd. Jeffreys,

Prothono-  
tary's Office  
Stamp.

Dep. Cl. Try. (b)

Wax Seal  
in a tin  
box.

(a) If four terms are elapsed before the recovery is exemplified, the exemplification must be examined and signed by the clerk of the Treasury after the prothonotaries pass

it, but before it is sealed.  
(b) He has the care of the Treasury, which contains the records of the Court from the 1st Henry VIII. bound.

## CXXVIII.

*Indorsement on the Exemplification.*

Trinity Term, 6 George IV.

MIDDLESEX.

B., Gent. demandant,	}	Recovery roll 502.
C., Gent. tenant		
F., and wife, vouchees.		

## CXXIX.

*Entry of a recovery of an advowson, with double voucher; the tenant and vouchee both appearing in person. (a)*

Writ of right, returnable, &amp;c.

BERKSHIRE (*to wit.*) A. B., in his proper person, demandeth, against C. D., the advowson of the church, of H., otherwise I., of which the said C. hath unjustly deforced him, &c. and whereof he saith, that he was seised of the advowson aforesaid, as of fee (*b*) and right in time of peace, in the time of our Lord the now King; and, being so seised, he presented one H. H.,

Count  
against the  
tenant.

- (a) The present practice is to add a nominal quantity of land to the advowson, and then the recovery is suffered, on a writ of entry, instead of a writ of right of advowson. But, query the validity of this practice?
- (b) Of a corporeal inheritance a man is said to be seised in his demesne as of fee; but of an incorporeal one, he is only said to be seised as of fee, Bl. Com. B. 2. c. 7.

as his clerk, to the said church, being vacant; who, on his presentation, was admitted and instituted into the same in time of peace, in the time of the Lord the now King; which said H. took the profits thereof (c) as in great tithes, small tithes, oblations, and obventions, to the value, &c. as in right of his said church, and that such is his right he offereth, &c.

His defence  
and vouch-  
er.

Vouchee's  
appearance  
and war-  
ranty.

Count a-  
gainst him  
thereon.

And the said C., in his proper person, cometh and defendeth the right of the said A., and his seisin, when, &c. and all, &c. and whatsoever, &c. and mostly of the advowson aforesaid, as of fee and right &c. and calleth thereof to warranty E. F., clerk, who is present here in Court, in his proper person, and freely here in Court warranteth to him the advowson aforesaid, &c. And hereupon the said A. demandeth, against the said F., tenant, by his own warranty, the advowson aforesaid, in form aforesaid, &c. and whereof he saith that he was seised of the advowson aforesaid as of fee and right in time of peace, in the time of the Lord the now King; and being so seised, presented H. H., his clerk, to the said church, being vacant, who, on the presentation of the said A., was admitted and instituted into the same in time of peace, in the time of the Lord the now King; which said H. took the profits thereof as in great tithes, small tithes, oblations, and obventions, to the value, &c., as in right of his said church, and that such is his right, he offers, &c.

His defence  
and vouch-  
er of the  
common  
vouchee.

His appear-  
ance and  
warranty.

And the said E., tenant, by his own warranty, defendeth the right of the said C. and his seisin, when, &c. and all, &c. and whatsoever, &c. and mostly of the advowson aforesaid, as of fee and right, &c.; and further calleth thereof to warranty G. H., (d) who is like-

(c) In a writ of right of advow-  
son the patron shall not allege  
the taking of the profits in  
himself, but in his incum-

bent, Co. Litt. B. i. c. 1. s.  
10.

(d) The common vouchee.

wise present here in Court in his proper person, and freely here in Court warranteth to him the advowson aforesaid, &c. ; and hereupon the said A. demandeth, against the said G., tenant, by his own warranty, the advowson aforesaid, in form aforesaid, and whereof he saith that he was seised of the advowson aforesaid, as of fee and right in time of peace, in the time of the Lord the now King ; and, being so seised, presented the said H. H., his clerk, to the said church, being vacant, who, on the presentation of the said A., was admitted and instituted into the same in time of peace, in the time of our Lord the now King ; which said H. took the profits thereof as of great tithes, small tithes, oblations, and obventions, to the value, &c. as in right of his said church, and that such is his right he offereth, &c.

Count a-  
gainst him  
thereon.

And the said G., tenant, by his own warranty, defendeth the right of the said C. and his seisin, when, &c. and all, &c. and whatsoever, &c. and mostly of the advowson aforesaid as of fee and right, &c. and puts himself upon the grand assize of the Lord the King, and prays that the recognition thereof be made, whether he hath more right to hold the advowson aforesaid as tenant thereof by his warranty, as he holds the same, or the said A., to have the same advowson, as he above demands the same, &c.

His de-  
fence.

And hereupon the said A. prays leave to imparl, and he hath it, &c., and afterwards the said A. comes here again into Court in this same Term, in his proper person ; and the said G., although solemnly demanded, cometh not again, but departed in contempt of the Court, and maketh default. Therefore it is considered that the said A. recover his seisin against the said C., of the advowson aforesaid, to hold to him and his heirs, quit of the said C. and his heirs, and of the said E. and his heirs, and also of the said G. and his heirs for ever ;

Imparl-  
ance.

Judgment.

Award of  
seisin.

Return.

and that the said C. have of the land of the said E. to the value, &c., and further that the said E. have of the land of the said G. to the value, &c., and the said G. in mercy, &c. And hereupon the said A. prays a writ of our Lord the King to be directed to the sheriff of the county aforesaid, to cause full seisin of the advowson aforesaid to be delivered to him, and it is granted to him returnable here from the day of St. Michael in three weeks, &c. At which day the said A. cometh here into Court in his proper person; and the Sheriff, namely, G. H. Esq. now returneth that he, by virtue of the said writ to him directed, on the eighteenth day of July last past, caused full seisin of the advowson aforesaid to be delivered to the said A., as by the said writ he was commanded, &c.

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### CXXX.

#### *Entry of the reversal of a Recovery of ancient demesne lands.*

Writ of deceit, returnable, &c.

Seisin of  
the pre-  
mises, be-  
ing ancient  
demesne.

ESSEX, to wit. Sir Cordell Firebrace, Baronet, and William Hollingworth, Esquire, were attached to answer the Lord the now King of a plea, whereas the said Lord the now King was and still is seised of the manor of *Havering Atte Bower*, with the appurtenances in the county aforesaid, in his demesne as of fee, in right of his crown of England, &c. and which said manor, with the appurtenances, is, and from time whereof to the contrary the memory of man doth not exist, was of the ancient demesne of the crown of England, &c., and all and singular manors, lands, and tenements, with the appurtenances, which are held of the

same manor for all the time abovesaid, were pleadable and to be impleaded in the Court of that manor, before the bailiffs and suitors of the same Court for the time being, by the writ of the said now King and his predecessors, kings and queens of England, &c. of right-close, and not elsewhere or otherwise, according to the custom of the said manor for all the time abovesaid there used and approved. “Nevertheless, one *George Campbell* (not being ignorant of the premises) contriving cunningly and deceitfully to defraud the said Lord the now King of the profits of the said manor with the appurtenances, on the seventh day of *November* in the *eleventh* year of the reign of the said Lord the now King, prosecuted a certain original writ of the said Lord the now King, of entry upon disseisin in le post, out of the Court of the said Lord the now King of Chancery (the same Court of Chancery being then at *Westminster*, in the county of *Middlesex*), against the said *Sir Cordell Firebrace* and *William Hollingworth*, of the manor of *Gobions*, otherwise *Uphavering*, with the appurtenances, and of eight messuages, &c. &c. with the appurtenances, in *Havering Atte Bower*, in the parish of *Hornchurch*, in the said county of *Essex*. By which the said lord the now King commanded the same Sheriff, that he should command the said *C. Firebrace* and *W. Hollingworth*, that, justly and without delay, they should render to the said *George Campbell* the said manor, tenements, and common, with the appurtenances, by the name of the *Manor of Gobions*, otherwise *Uphavering*, with the appurtenances [*&c. as before to Hornchurch*], which he claimed to be his right and inheritance, and into which the same *Sir Cordell Firebrace* and *William Hollingworth*, have not entry, but after the disseisin, which *Hugh Hunt* thereof unjustly and without judgment, had made to the aforesaid

Recital of  
the recovery.

“ *G. Campbell*, within thirty years then last past, as he  
“ said, and whereupon he complained, that the said  
“ *Sir C. Firebrace and W. Hollingworth* deforced.  
“ And unless they should do so, and the said *George*  
“ *Campbell* should give him the said Sheriff security,  
“ that his suit should be prosecuted, then the said *Lord*  
“ *the King* that now is commanded the then Sheriff,  
“ that he should summon by good summoners the said  
“ *Sir C. Firebrace and W. Hollingworth*, that they  
“ should be before the Justices of the *Lord the King*  
“ that now is, at *Westminster, from the day of St.*  
“ *Martin, in fifteen days*, to shew wherefore they  
“ would not do it, &c. At which *fifteen days from*  
“ *the day of Saint Martin*, before the said Justices of  
“ the said *Lord the now King* of the Bench, Herbert  
“ Trist, Esq., then Sheriff of the said county of *Essex*,  
“ returned the said writ served and executed. And there-  
“ upon at the *fifteen days from the day of St. Martin*,  
“ in the said Court, before the then Justices of the said  
“ *Lord the now King*, came the said *G. Campbell*, in  
“ his proper person, and demanded against the said *Sir*  
“ *C. Firebrace and W. Hollingworth*, the manor, tene-  
“ ments, and common aforesaid, with the appurtenances  
“ by the name of *the manor of Gobions* [*&c. as before*], as  
“ his right and inheritance, and into which the said *Sir*  
“ *Cordell and William* had not entry, but after the dis-  
“ seisin which *Hugh Hugh* thereof unjustly and without  
“ judgment made to the aforesaid *G. Campbell*, within  
“ thirty years, &c. And whereupon he said, that he  
“ was seised of the *manor, tenements, and common*  
“ *aforesaid with the appurtenances*, in his demesne as  
“ of fee and right in time of peace, in the time of the  
“ said *Lord the now King*, by taking the profits thereof  
“ to the value, &c., and into which, &c., and thereof  
“ he bringeth suit, &c. And the said *Sir Cordell* and  
“ *William*, in their proper persons, came and defended



“ their right, when, &c., and thereupon vouched to war-  
 “ rant *John Curven, Esq. and Ann* his wife, who, being  
 “ summoned in the county aforesaid, had them there  
 “ *in eight days of the Purification of the Blessed Virgin*  
 “ *Mary*, by the aid of the Court, &c, the same day  
 “ was given there to the parties aforesaid; and upon  
 “ this the said *Sir Cordell* and *William* put in their  
 “ places B. J. and E. B. their attornies, jointly and se-  
 “ verally, against the said *George* to gain or lose in the  
 “ plea aforesaid, &c. At which day there came, as well  
 “ the said *George*, in his proper person, as the afore-  
 “ said *Sir Cordell* and *William*, by B. J. their said at-  
 “ torney, and the said *John* and *Ann* being summoned,  
 “ &c., likewise came by *Alexander Baillie*, their attor-  
 “ ney, and freely warranted the *manor, tenements, and*  
 “ *common aforesaid, with the appurtenances*, to the said  
 “ *Sir Cordell* and *William*, &c. And thereupon the  
 “ said *George* demanded against the said *John* and *Ann*,  
 “ tenants by their own warranty, the *manor, tenements,*  
 “ *and common aforesaid, with the appurtenances*, in  
 “ manner aforesaid, &c.; and whereupon he said he was  
 “ seised of the *manor, tenements, and common afore-*  
 “ *said, with the appurtenances*, in his demesne as of  
 “ fee and right, in time of peace, in the time of the said  
 “ *Lord the King* that now is, by taking the profits  
 “ thereof to the value, &c., and into which, &c., and  
 “ thereof he bringeth suit, &c. And the said *John* and  
 “ *Ann*, tenants by their own warranty, defended their  
 “ right, when, &c., and thereupon vouched over to  
 “ warranty *Jacob Morland (a)*, who was then present  
 “ in the same Court, in his proper person, and freely  
 “ warranted to them the *manor, tenements, and com-*  
 “ *mon aforesaid, with the appurtenances*, &c. And  
 “ thereupon the said *George* demanded against the said

(a) The common vouchee.

“ *Jacob*, tenant by his own warranty, the *manor, tenements, and common aforesaid, with the appurtenances*, in manner aforesaid, &c. and whereupon he said that he was seised of the *manor, tenements, and common aforesaid, with the appurtenances*, in his demesne, as of fee and right, in time of peace, in the time of the *Lord the King* that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c. And the said *Jacob*, tenant by his own warranty, defended his right, when, &c., and said that the said *Hugh* had not disseised the said *George* of the *manor, tenements, and common aforesaid, with the appurtenances*, as the said *George*, by his writ and declaration aforesaid above supposed, and of this he put himself upon the country, &c. and the said *George* thereupon craved leave to imparl, and he had it, &c. And afterwards the said *George* came again there into the same court, in that same term, in his proper person; and the same *Jacob*, although solemnly called, came not again, but departed in contempt of the Court, and made default: therefore it was adjudged, that the said *George* should recover his seisin against the said *Sir Cordell* and *William* of the *manor, tenements, and common aforesaid, with the appurtenances*; and that the said *Sir Cordell* and *William* should have of the land of the said *John* and *Ann* to the value, &c., and that the said *John* and *Ann* should have over of the land of the said *Jacob* to the value, &c.; and the said *Jacob*, in mercy, &c. As by the record thereof, in the court of the *Lord the King* that now is, of the Bench at Westminster remaining, it more fully is manifest and appears; which said recovery, in form aforesaid, had and suffered, was to the use of the said *Sir C. Firebrace* and *W. Hollingworth*, their heirs and assigns for ever. By virtue of which said recovery the

The use of  
the former  
recovery.

“ said *Sir C. Firebrace and W. Hollingworth*, were seised  
 “ of the *manor, tenements, and common aforesaid, with*  
 “ *the appurtenances*, in their demesne as of fee; and  
 “ by reason of the said recovery, the *manor, tenements,* Effect of it.  
 “ *and common aforesaid, with the appurtenances*, be-  
 “ came frank-fee and to be impleaded and impleadable  
 “ at the common law; and the said recovery is in ma-  
 “ nifest deceit and derogation of the jurisdiction of the  
 “ said *Lord the now King* to the damage of the same  
 “ *Lord the King of 40l.*” And whereupon *Dudley Ryder* Count.  
*Esq.*, attorney-general of the said *Lord the now King*,  
 who prosecutes for the same *Lord the King*, complains,  
 wherefore, whereas, the said *Lord the now King*, was  
 and still is seized of the said *manor of Havering Atte*  
*Bower with the appurtenances*, in his demesne as of  
 fee, in right of the crown of England, &c. which  
 said manor with the appurtenances is, and from time  
 whereof to the contrary the memory of man doth  
 not exist, was of the ancient demesne of the Crown  
 of England, &c.; and all and singular manors, lands,  
 and tenements, with the appurtenances, which are held  
 of the same manor for the time abovesaid, were  
 pleadable and to be impleaded in the Court of that  
 manor, before the bailiffs and suitors of the same  
 Court for the time being, by the writ of the said *Lord*  
*the now King*, and his predecessors, late kings and  
 queens of England, &c. of right-close, and not else-  
 where or otherwise, according to the custom of the  
 same manor for all the time abovesaid there used and  
 approved. Nevertheless, one *George Campbell* [*here*  
*is repeated what has before been inserted within in-*  
*verted commas.*] And this the same attorney-general of  
 the said *Lord the now King*, for the same lord the  
 King is ready to verify, &c.

And the aforesaid *Sir Cordell and William*, by *Tho-* Defence.

*mas Lechmere*, their attorney, come and say that they cannot deny the action of the said *Lord the now King* : but that the said *manor of Havering Atte Bower with the appurtenances*, is and from time whereof the memory of man doth not exist to the contrary, was of ancient demesne of the Crown of England ; nor but that the said *manor of Gobions otherwise Uphavering with the appurtenances*, and the said *messuages, lunds, and premises, with the appurtenances*, in the declaration aforesaid mentioned, are and at the time of suffering the said recovery were, parcel of the same manor of *Havering Atte Bower* ; nor but that the said *Lord the now King* is seised of the same manor of *Havering Atte Bower*, in his demesne as of fee, in right of his crown of England ; and the same Sir C. and William acknowledge the right of the said *Lord the now King*, to prosecute his aforesaid writ for vacating and annulling the recovery aforesaid in the declaration aforesaid mentioned. And upon this *Dudley Ryder, Esq., attorney-general* of the said *Lord the King*, who, &c. says, that he will not prosecute any further for the said *Lord the King*, against the said *Sir Cordell and William*, for any damage to be adjudged to the said *Lord the King*, by reason of the premises, but, further to prosecute for the said *Lord the King*, upon that writ for the same, doth altogether revoke and refuse ; therefore, the said *Sir Cordell and William* are released from the damages, &c. ; and the same *attorney-general* who, &c. for the same *Lord the now King*, demands judgment of the Court here, of and concerning the premises aforesaid. THEREFORE IT IS CONSIDERED, that the said recovery, in the said declaration mentioned, of the *manor, tenements, and common* in the said recovery contained and expressed, with the *appurtenances*, before the said justices in form aforesaid suffered, be

revoked, annulled, vacated, and altogether held for nothing, and that the said *Lord the King* be restored to his said jurisdiction, and the said *Sir Cordell Firebrace and William Hollingworth* in mercy, &c. (d)

(d) Mich. T. 12 Geo. II. Rolls 21      *Jones and Others*, 1 Lutwyche  
and 22. See *ante*, p. 102.      711.  
note (w) and *Plymouth v.*

## CXXXI.

*Bill of Costs for a fine by dedimus potestatem.*

Fine of B. and wife, Trinity Term, 1825.

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Taking instructions for fine	-	-	0	0 0	0	6 8
Perusing the deeds and extracting the parcels	-	-	0	0 0	0	6 8
Præcipe for dedimus potestatem, and copy for the cursor	-	-	0	0 0	0	5 0
Paid for the dedimus	-	-	1	5 8	1	5 8
Fee thereon	-	-	0	0 0	0	10 0
Drawing præcipe and concord (a)	-	-	0	0 0	0	5 4
Engrossing	-	-	0	0 0	0	2 8
Copy to annex to the affidavit	-	-	0	0 0	0	2 8
Paid for parchment for same	-	-	0	2 0	0	2 0

(a) Common length, supposed to be folio 4; if longer 1*s.* 4*d.* per folio.

	Out of pocket.	Agent.	Attorney.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Several attendances upon the commissioners and parties settling the time and place for taking the acknowledgments	- - - 0 0 0	0 3 4	0 6 8
Paid the two commissioners taking the same	- - - 1 6 8	1 6 8	1 6 8
Attending with the parties thereon	- - - 0 0 0	0 3 4	0 6 8
Drawing and ingrossing affidavit of the caption	- - - 0 0 0	0 2 8	0 5 4
Paid for parchment and oath	- - - 0 2 0	0 2 0	0 2 0
Attending to get sworn thereto	- - - 0 0 0	0 3 4	0 6 8
Drawing præcipe for writ of covenant and copy	- - - 0 0 0	0 2 6	0 5 0
Paid for the writ	- - - 2 3 6	2 3 6	2 3 6
Fee thereon	- - - 0 0 0	0 5 0	0 10 0
Attending for judge's allocatur	- - - 0 0 0	0 3 4	0 6 8
Paid for same	- - - 0 4 0	0 4 0	0 4 0
Taking instructions for affidavit to moderate the fines payable to the Crown	- - - 0 0 0	0 3 4	0 6 8
Drawing and ingrossing the affidavit	- - - 0 0 0	0 2 8	0 5 4
Paid for oath and attending deponent to get sworn	- - - 0 1 0	0 4 4	0 6 8
Attending to compound at the alienation office	- - - 0 0 0	0 3 4	0 6 8

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid the fines (according to the value)	-	-	-	-	-	-
Paid office fees ( <i>b</i> )	-	-	0 2 4	0 2 4	0 2 4	0 2 4
Paid at the return office	-	-	0 2 0	0 2 0	0 2 0	0 2 0
Warrant of attorney and paid for parchment filing and post terminum ( <i>c</i> )	-	-	0 0 8	0 2 4	0 4 0	0 4 0
Paid custos brevium and post terminum	-	-	0 5 4	0 5 4	0 5 4	0 5 4
Attending proclaiming fine	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Paid king's silver and post terminum	-	-	0 6 4	0 6 4	0 6 4	0 6 4
Paid the chirographer	-	-	0 6 2	0 6 2	0 6 2	0 6 2
Paid for indentures and duty ( <i>d</i> )	-	-	1 8 0	1 8 0	1 8 0	1 8 0
Attending for and examining the same	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Fee on passing fine through the different offices	-	-	0 0 0	0 6 8	0 13 4	0 13 4
Term fee for both parties	-	-	0 0 0	0 13 4	1 6 8	1 6 8
Letters, postages, &c.	-	-	0 5 0	0 7 6	0 10 0	0 10 0

(*b*) In vacation 3s. 4d.

(*c*) On filing the clerk takes the arrears of your termages, if any; and fourpence more for the *post terminum* if the warrant is not filed till after the term in which the writ of covenant is returnable, as it is not where the fine is by *dedimus*.

(*d*) The charge for the indentures varies according to the length.



*Bill for a fine before the Lord Chief Justice.*

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Instructions and warrant	-	0 0 0	0	3 4	0	6 8
Perusing the deeds and extracting the parcels	-	0 0 0	0	3 4	0	6 8
Drawing præcipe, and concord, and copy	-	0 0 0	0	2 8	0	5 4
Ingrossing same and parchment	-	0 1 0	0	2 4	0	3 8
Copy on paper for the chief justice	-	0 0 0	0	1 4	0	2 8
Attending the parties appointing them to attend to acknowledge the fine	-	0 0 0	0	3 4	0	6 8
Attending with the parties upon the chief justice to acknowledge the fine	-	0 0 0	0	3 4	0	6 8
Paid fees	-	0 13 0	0	13 0	0	13 0
Præcipe for writ of covenant	-	0 0 0	0	2 6	0	5 0
Paid for the writ	-	2 5 6	2	5 6	2	5 6
Fee thereon	-	0 0 0	0	5 0	0	10 0

*The rest of the charges as in the preceding bill.*

## CXXXIII.

*Bill for a Fine, in Court.*

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Taking instructions for the fine - - -	-	0 0 0	-	0 3 4	-	0 6 8
Perusing the conveyances, and extracting the parcels - -	-	0 0 0	-	0 3 4	-	0 6 8
Præcipe for the writ of covenant, and copy for the cursor	-	0 0 0	-	0 2 6	-	0 5 0
Paid for the writ and private seal (i)	-	2 11 0	-	2 11 0	-	2 11 0
Fee thereon - - -	-	0 0 0	-	0 5 0	-	0 10 0
Paid bag-bearer for delivering the writ at Westminster (k)	-	0 1 0	-	0 1 0	-	0 1 0
Drawing præcipe, and concord, and copy - - -	-	0 0 0	-	0 2 8	-	0 5 4
Paid for parchment for the same - - -	-	0 1 0	-	0 1 0	-	0 1 0
Ingrossing - - -	-	0 0 0	-	0 1 4	-	0 2 8
Attending the cognizor at his house, and from thence to Westminster, on his acknowledging the fine in court - - -	-	0 0 0	-	0 6 8	-	0 13 4

(i) Writ, 2*l.* 2*s.* 6*d.* private seal, 8*s.* 6*d.*

(k) This he will do for your accommodation.

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Serjeant's fee on counting at bar (l)	-	-	-	-	0	3 4
Attending Court thereon	-	-	-	-	0	3 4
Court fees (m)	-	-	-	-	0	6 8
					0	2 6

*The rest of the charges are similar to those in the bill for fine before commissioners.*

(l) The serjeant allows the agent 1s. 4d. out of his 3s. 4d. so that he only has 2s. which you pay with the court fees to the serjeant's clerk.

(m) Prothonotary, 6d. secondary, 6d. cryer, tipstaves, and court keeper, 1s. 6d.

h2

## CXXXIV.

*Bill for half a Dedimus Potestatem on acknowledgment taken before a puisne judge.*

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Perusing deeds and extracting parcels for fine	-	0 0 0	0 6 8		0 13 4	
The chief justice being out of town, attending Mr. Justice Park in Bedford Square, to make appointment to take the acknowledgment, when he fixed the next day, at twelve o'clock						
Drawing præcipe and concord, and copy	-	0 0 0	0 3 4		0 6 8	
Ingrossing same, and parchment	-	0 0 0	0 2 8		0 5 4	
Fair copy for the judge	-	0 1 0	0 2 4		0 3 8	
Instructions for half dedimus	-	0 0 0	0 1 4		0 2 8	
Drawing præcipe for same, and copy for the cursor	-	0 0 0	0 3 4		0 6 8	
Paid for half dedimus potestatem and expedition	-	0 11 2	0 11 2		0 5 0	
Fee thereon	-	0 0 0	0 5 0		0 11 2	
	-	0 0 0	0 5 0		0 10 0	

*The remainder of the charges same as for a fine acknowledged before the chief justice.*

CXXXV.

*On motion to pass Fine after the death of one of the cognizors.*

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	Out of pocket.	Agent.	Attorney.
	l. s. d.	l. s. d.	l. s. d.
One of the cognizors having died before the fine was completed, instructions to apply to the court for leave to pass the fine as of Michaelmas Term, 1824,	- - -	- - -	- - -
Drawing and engrossing affidavit of the facts, fo. 11.	0 0 0	0 3 4	0 6 8
Attending reading over, and to get sworn	0 0 0	0 3 8	0 7 4
Paid oath	0 0 0	0 1 8	0 3 4
Drawing brief for serjeant to move, and fair copy	0 1 0	0 1 0	0 1 0
Paid Mr. Serjeant Bosanquet to move	0 0 0	0 5 0	0 10 0
Attending him and court	0 10 6	0 10 6	0 10 6
Paid for rule to shew cause	0 0 0	0 3 4	0 6 8
Copy and service on deforceants	- - -	- - -	- - -
Affidavit of service and oath	0 0 0	0 3 0	0 4 8
Drawing brief to move to make rule absolute, and copy	0 0 0	0 3 4	0 6 8

	Out of pocket.	Agent.	Attorney.
	l. s. d.	l. s. d.	l. s. d.
Paid Mr. Serjeant Bosanquet therewith, and clerk	-	1 3 6	1 3 6
Attending him	-	0 1 8	0 3 4
The surviving cognizors consenting, instructions to counsel on their behalf			
to consent	-	0 0 0	0 6 8
Paid Mr. Serjeant Vaughan therewith	-	1 1 0	1 1 0
Attending him	-	0 0 0	0 3 4
Attending court rule made absolute	-	0 0 0	0 6 8
Paid for rule	-	-	-
Making three copies thereof for the several offices	-	0 3 0	0 6 0

*The remaining charges are as in the former cases.*

## CXXXVI.

*Bill for a recovery with double voucher, the tenant in person, and the vouchee by attorney.*

A., demandant.  
B., tenant.  
C., vouchee.

Hilary Term, 1815.

	Out of pocket.	Agent.	Attorney.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Attending Mr. C., taking instructions for recovery to cut off the entail of his estate at D.	0 0 0	0 6 8	0 13 4
Drawing lease and release to make the tenant to the writ and lead the use of the recovery,—three skins	0 0 0	1 10 0	3 0 0
Copy for conveyancer to settle and advise	0 0 0	0 10 0	1 0 0
Gave him therewith and clerk	3 5 6	3 5 6	3 5 6
Attending him several times thereon	0 0 0	0 6 8	0 13 4
Engrossing the deeds	0 0 0	1 0 0	2 0 0
Stamps and parchment	4 10 0	4 10 0	4 10 0
Attending the execution of them by the grantor	0 0 0	0 6 8	0 13 4

	Out of pocket.	Agent.	Attorney.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Agent's executing them as the grantee	-	-	-
Perusing the deeds and extracting the parcels	-	-	-
Præcipe for writ of entry ( <i>l</i> )	-	-	-
Paid for the writ	-	-	-
Fee thereon -	-	-	-
Paid returning the writ	-	-	-
Præcipe at bar	-	-	-
Entering it on the remembrance roll	-	-	-
Serjeant counting recovery at bar by demandant and tenant ( <i>m</i> )	-	-	-
Attending court thereon	-	-	-
Agent's appearance there as tenant	-	-	-
Paid court fees	-	-	-

(*l*) This is the natural order of the proceedings; but in practice the dedimus is issued first, and the tenant does not appear at bar till the return of the summons. The cursitor makes out the writ of entry, and also the mittimus and transcript from the dedimus and return.

(*m*) The serjeant allows the agent 1*s.* 4*d.* out of each 3*s.* 4*d.*, so that you only actually pay 4*s.*



	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending the commissioners at the Alienation Office, compounding the fine payable to the Crown	0	0	0	0	3	4
Paid the fine (according to the value)	—	—	—	—	—	—
Paid the office fees thereon ( <i>n</i> )	0	2	2	0	2	2
Attending paying the fine and fees	0	0	0	0	3	4
Attending the Attorney-General for his hand to the writ of entry	0	0	0	0	3	4
Paid him thereon and clerk ( <i>o</i> )	0	10	6	0	10	6
Drawing count against the tenant with award of summons against the vouchee, and copy ( <i>p</i> )	0	0	0	0	2	8
Entering it on the roll	0	0	0	0	1	4
Prothonotaries ( <i>q</i> )	0	6	0	0	6	0
Docketing	0	0	0	0	0	9
Writ of summons ( <i>r</i> )	0	1	11	0	5	3

(*n*) In vacation, 3*s*. (*o*) Ten shillings is the Attorney-General's fee: but the 6*d.* is now usually given to the clerk.

(*p*) Folio 4.—1*s.* 4*d.* a folio for drawing all entries,—and 8*d.* a folio for entering them.

(*q*) Out of the six shillings the prothonotaries allow the agent one shilling. 'You pay' the prothonotaries' fees altogether, when the recovery passes their office.

(*r*) Signing, 1*s.* 4*d.* (which the prothonotary allows the attorney,) sealing, 7*d.*; engrossing, 1*s.*; fee, 6*s.* 8*d.*

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Præcipe for dedimus to take the vouchee's warrant	-	0 0 0	0	2 6	0	5 0
Paid for the writ	-	1 4 8	1	4 8	1	4 8
Fee thereon	-	0 0 0	0	5 0	0	10 0
Drawing præcipe and warrant	-	0 0 0	0	3 4	0	6 8
Copy to take the acknowledgments on	-	0 0 0	0	1 8	0	3 4
Copy to annex to the affidavit	-	0 0 0	0	1 8	0	3 4
Paid for parchment for the same	-	0 2 0	0	2 0	0	2 0
Several attendances, fixing the time and place for acknowledging the warrant	-	0 0 0	0	3 4	0	6 8
Paid the two commissioners taking the same (s)	-	1 6 8	1	6 8	1	6 8
Attending thereon	-	0 0 0	0	6 8	0	13 4
Drawing and engrossing affidavit of the caption	-	0 0 0	0	2 8	0	5 4
Paid for parchment and oath	-	0 2 0	0	2 0	0	2 0
Attending to get sworn thereto	-	0 0 0	0	3 4	0	6 8
Attending judge for his allocatur	-	0 0 0	0	3 4	0	6 8
Paid for the same	-	0 4 0	0	4 0	0	4 0

(s) If at a distance, more accordingly.

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Term fee for demandant and tenant	-	0 0 0	-	0 13 4	1	6 8
Letters, &c.	-	0 5 0	-	0 7 6	0	10 0
<i>Easter Term, 1815.</i>						
Attending filing the dedimus and return	-	0 0 0	-	0 3 4	0	6 8
Paid for mitimus and transcript thereof	-	0 15 6	-	0 15 6	0	15 6
Fee thereon	-	0 0 0	-	0 5 0	0	10 0
Entering them on the roll ( <i>z</i> )	-	0 0 0	-	0 4 0	0	8 0
Prothonotaries for the entry	-	0 6 0	-	0 6 0	0	6 0
Paid returning the writ of summons	-	0 2 6	-	0 2 6	0	2 6
Serjeant counting recovery at bar by all the parties	-	0 13 4	-	0 13 4	0	13 4
Tenant's appearing in court	-	0 0 0	-	0 6 8	0	6 8
Attending court passing the recovery at bar	-	0 0 0	-	0 3 4	0	6 8
Paid the court fees	-	0 7 6	-	0 7 6	0	7 6

(i) Folio 12.

	Out of pocket.		Agent.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Writ of seisin ( <i>a</i> )	-	-	-	-	-	-
Paid returning it	-	-	-	-	-	-
Paid prothonotaries filing the writs	-	-	-	-	-	-
Attending returning and filing the same	-	-	-	-	-	-
Drawing the recovery ( <i>b</i> )	-	-	-	-	-	-
Entering it on the roll ( <i>c</i> )	-	-	-	-	-	-
Prothonotaries for the entry ( <i>d</i> )	-	-	-	-	-	-
Exemplifying it ( <i>e</i> )	-	-	-	-	-	-
Paid for the stamp, (55 Geo. III. c. 184.) and parchment	-	-	-	-	-	-
Attending examining the entries and exemplification, and passing the recovery with the prothonotaries	-	-	-	-	-	-
Paid sealing the exemplification and box	-	-	-	-	-	-
Attending thereon	-	-	-	-	-	-
Term fee for the demandant, tenant, and two vouches	-	-	-	-	-	-
Letters, &c.	-	-	-	-	-	-

(*a*) The same as the writ of summons.—See note (*r*), page 393. (*b*) Folio 19. For the rate of charge, see note (*p*), page 393.

(*c*) Ibid. (*d*) Out of this, they allow the agent 1*s.* (*e*) Folio 22, 1*s.* 8*d.* a folio.

## CXXXVII.

*Bill for Recovery with treble voucher, the tenant in person, and the vouches by attorney.*

*A*, demandant.  
*B*, tenant.  
*C*, first vouchee.  
*D*, second vouchee.

Michaelmas Term, 1815.

		Out of pocket.		Agent.		Attorney.	
		<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions for the recovery	-	0	0	0	0	3	4
Perusing the deeds and extracting the parcels	-	0	0	0	0	3	4
Præcipe for writ of entry ( <i>a</i> )	-	0	0	0	0	2	6
Paid for the writ	-	2	3	0	2	3	0
Fee thereon	-	0	0	0	0	5	0
Paid returning the writ	-	0	2	6	0	2	6

(*a*) This is the natural order of the proceedings; but in practice the vouchee's warrants are taken first.

	Out of pocket.		Agcat.		Attorney.	
	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>	<i>l.</i>	<i>s. d.</i>
Præcipe for bar	-	-	-	-	-	-
Entering it on the remembrance roll	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Serjeant counting recovery at bar by demandant and tenant	-	-	0 0 0	0 2 6	0 5 0	0 5 0
Attending court thereon	-	-	0 6 8	0 6 8	0 6 8	0 6 8
Agent's appearance there as tenant	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Attending the commissioners at the Alienation Office compounding the fine payable to the crown	-	-	0 0 0	0 6 8	0 6 8	0 6 8
Paid the fine and office fees ( <i>b</i> )	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Attending paying the same	-	-	8 15 6	8 15 6	8 15 6	8 15 6
Attending the Attorney-General for his hand to the writ of entry	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Paid him thereon and clerk	-	-	0 0 0	0 3 4	0 6 8	0 6 8
Drawing the summons roll and copy ( <i>c</i> )	-	-	0 10 6	0 10 6	0 10 6	0 10 6
Entering it on the roll	-	-	0 0 0	0 2 8	0 5 4	0 5 4
Prothonotaries ( <i>d</i> )	-	-	0 0 0	0 1 4	0 2 8	0 2 8
	-	-	0 6 0	0 6 0	0 6 0	0 6 0

(b) Fine, 8*l.* 13*s.* 4*d.* fees, 2*s.* 2*d.* (c) Fol. 4.(d) Out of this they allow the agent 1*l.*—You pay the prothonotaries' fees altogether when the recovery passes their office.

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Docketing - - - - -	-	0 0 0	-	0 0 9	0	1 6
Writ of summons against the first vouchee - - -	-	0 1 11	-	0 5 3	0	8 7
Præcipe for dedimus to take the first vouchee's warrant	-	0 0 0	-	0 2 6	0	5 0
Paid for the writ - - - - -	-	1 4 8	-	1 4 8	1	4 8
Fee thereon - - - - -	-	0 0 0	-	0 5 0	0	10 0
Drawing præcipe with the warrant - - - - -	-	0 0 0	-	0 3 4	0	6 8
Copy to take the acknowledgment on - - - - -	-	0 0 0	-	0 1 8	0	3 4
The like to annex to the affidavit of the caption	-	0 0 0	-	0 1 8	0	3 4
Paid for parchment for the same - - - - -	-	0 2 0	-	0 2 0	0	2 0
Several attendances, appointing the time and place for taking the warrant - - - - -	-	0 0 0	-	0 3 4	0	6 8
Paid the commissioners for taking the same - - -	-	1 6 8	-	1 6 8	1	6 8
Attending thereon - - - - -	-	0 0 0	-	0 3 4	0	6 8
Drawing and engrossing affidavit of the caption	-	0 0 0	-	0 2 8	0	5 4
Paid for parchment and oath - - - - -	-	0 2 0	-	0 2 0	0	2 0
Attending to get sworn thereto - - - - -	-	0 0 0	-	0 3 4	0	6 8

	Out of pocket.	Agent.	Attorney.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Attending judge for his allocatur	-	-	-
Paid for the same	-	0 3 4	0 6 8
Term fee for demandant and tenant	-	0 4 0	0 4 0
Letters, &c.	-	0 0 0	1 6 8
	-	0 5 0	0 10 0
<i>Hilary Term, 1816.</i>			
Paid returning the writ of summons	-	0 2 6	0 2 6
Attending filing the dedimus and return	-	0 0 0	0 6 8
Paid for mittimus and transcript thereof	-	0 15 6	0 15 6
Fee thereon	-	0 0 0	0 10 0
Entering the same on the roll	-	0 0 0	0 8 0
Prothonotaries for the entry ( <i>e</i> )	-	0 6 0	0 6 0
Serjeant counting recovery at bar by the demandant, tenant, and first vouchee	-	0 10 0	0 10 0

(*e*) Out of this they allow the agent 1*s*.



	Out of pocket.	Agent.	Attorney.
	l. s. d.	l. s. d.	l. s. d.
Tenants appearing in court	-	-	-
Attending court thereon	-	-	-
Drawing second summons roll and copy	-	-	-
Entering it on the roll	-	-	-
Prothonotaries (f)	-	-	-
Docketing	-	-	-
Writ of summons against the second vouchee	-	-	-
Præcipe for dedimus to take the second vouchee's warrant	-	-	-
Paid for the writ	-	-	-
Fee thereon	-	-	-
Drawing præcipe with the warrant	-	-	-
Copy to take the acknowledgment on	-	-	-
Copy to annex to the affidavit of the caption	-	-	-
Paid for parchment for the same	-	-	-
Several attendances on the parties and commissioners fixing the time and place for taking the warrant	-	-	-

(f) Out of this they allow the agent 1s.

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Paid the commissioners taking the same	-	-	-	-	-	-
Attending thereon	-	-	-	-	-	-
Drawing and engrossing affidavit of the caption	-	-	-	-	-	-
Paid for the parchment and oath	-	-	-	-	-	-
Attending to get sworn thereto	-	-	-	-	-	-
Attending judge for his allocatur	-	-	-	-	-	-
Paid for the same	-	-	-	-	-	-
Term-fee, for demandant, tenant, and first vouchee	-	-	-	-	-	-
Letters, &c.	-	-	-	-	-	-
	0	5 0	0	7 6	0	10 0
<i>Easter Term, 1816.</i>						
Paid returning the second writ of summons	-	-	-	-	-	-
Attending filing the second dedimus and return	-	-	-	-	-	-
Paid for the mittimus and transcript thereof	-	-	-	-	-	-
Fee thereon	-	-	-	-	-	-
Entering them on the roll	-	-	-	-	-	-
	0	2 6	0	2 6	0	2 6
	0	0 0	0	3 4	0	6 8
	0	15 6	0	16 6	0	15 6
	0	0 0	0	5 0	0	10 0
	0	0 0	0	4 0	0	8 0

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Prothonotaries for the entry (g)	-	0 6 0	0	6 0	0	6 0
Serjeant counting recovery at bar by all the five parties	-	0 16 8	0	16 8	0	16 8
Attending thereon	-	0 0 0	0	3 4	0	6 8
Agent's appearance as tenant	-	0 0 0	0	6 8	0	6 8
Paid the court fees	-	0 7 6	0	7 6	0	7 6
Writ of seisin	-	0 1 11	0	5 3	0	8 7
Paid returning it	-	0 2 6	0	2 6	0	2 6
so Paid prothonotaries filing the writs	-	0 5 0	0	5 0	0	5 0
so Attending returning and filing them	-	0 0 0	0	3 4	0	6 8
so Drawing the recovery and copy (h)	-	0 0 0	0	18 8	1	17 4
Entering it on the roll	-	0 0 0	0	9 4	0	18 8
Exemplifying it (i)	-	0 0 0	1	5 10	2	11 8
Paid for the stamp and parchment	-	3 8 0	3	8 0	3	8 0
Attending examining the entries and exemplification, and passing the recovery with the prothonotaries	-	0 0 0*	0	3 4	0	6 8

(g) Out of this they allow the agent 1s.

(h) Folio 28.

(i) Folio 31.

	Out of pocket.		Agent.		Attorney.	
	£	s. d.	£	s. d.	£	s. d.
Prothonotaries for the entry (k)	-	0 18 6	-	0 18 6	-	0 18 6
Paid sealing the exemplification and box	-	0 6 0.	-	0 6 0	-	0 6 0
Attending thereon	-	0 0 0	-	0 3 4	-	0 6 8
Term-fee for all the five parties	-	0 0 0	-	1 13 4	-	3 6 8
Letters, &c.	-	0 5 0	-	0 7 6	-	0 10 0

(k) Out of this they allow the agent 2s.

CXXXVIII.

*Bill for a recovery with double voucher, the tenant and vouchee in person.*

*A., demandant.*  
*B., tenant.*  
*C., vouchee.*

*Hilary Term, 1815.*

	Out of pocket.	Agent.	Attorney.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
Instructions for recovery	-	0 0 0	0 6 8
Perusing the conveyances and extracting the parcels	-	0 3 4	0 6 8
Præcipe for writ of entry	-	0 3 4	0 5 0
Paid for the writ	-	0 2 6	2 3 0
Fee thereon	-	2 3 0	0 10 0
Paid returning the writ	-	0 0 0	0 2 6
Attending Mr. D., to procure his attendance before the commissioners at the Alienation Office, to prove the value of the estate, in order to keep down the King's fine.	-	0 2 6	0 6 8

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Attending the commissioners compounding the fine	-	-	-	-	-	-
Paid the fine and office-fees (according to the value)	-	-	-	-	-	-
Attending paying the same	-	-	0	3	0	6
Attending the Attorney-General for his hand to the writ of entry	-	-	0	3	0	6
Paid him thereon and clerk	-	-	0	10	0	10
Præcipe to pass the recovery at bar	-	-	0	3	0	6
Entering it on the remembrance roll	-	-	0	2	0	5
Serjeant counting the recovery at bar for all the parties	-	-	0	13	0	13
Attending court thereon	-	-	0	3	0	6
Appearing at bar as the tenant	-	-	0	6	0	6
Paid the court-fees (h)	-	-	0	5	0	5
Writ of seisin (i)	-	-	0	1	0	8
Paid returning it	-	-	0	2	0	2

(h) Prothonotaries and secondary, 4s. 6d. crier, 6d. Where the vouchee is a peer, usher, 1l. 1s. 4d.; four clerks each, 2s. 8d.; court-fees, 10s. 6d.

(i) For the particulars, see page 393, note (r).

	Out of pocket.		Agent.		Attorney.	
	l.	s. d.	l.	s. d.	l.	s. d.
Paid the Prothonotaries filing the writs	-	0 2 0	-	0 2 0	0	2 0
Attending returning and filing the same	-	0 0 0	-	0 3 4	0	6 8
Drawing the recovery and copy ( <i>k</i> )	-	0 0 0	-	0 8 0	0	16 0
Entering it on the roll	-	0 0 0	-	0 4 0	0	8 0
Docketing	-	0 0 0	-	0 0 9	0	1 6
Exemplifying it, <i>fo.</i> 15.	-	0 0 0	-	0 12 6	1	5 0
Paid for the stamp and parchment	-	3 8 0	-	3 8 0	3	8 0
Attending examining the entries and exemplification, and passing the recovery with the prothonotaries	-	0 0 0	-	0 3 4	0	6 8
Prothonotaries for the entries ( <i>l</i> )	-	0 14 6	-	0 14 6	0	14 6
Paid clerk of the Treasury ( <i>m</i> )	-	1 18 10	-	1 18 10	1	18 10
Attending him	-	0 0 0	-	0 3 4	0	6 8
Paid sealing the exemplification and box	-	0 3 2	-	0 3 2	0	3 2
Term fee, for all the four parties	-	0 0 0	-	1 6 8	2	13 4
Letters, porters, &c.	-	0 5 0	-	0 7 6	0	10 0

(*k*) *Fol.* 12. For the rate of charge, see page 393, note (*g*). (l) Out of this they allow the agent 1*s.*

(*m*) According to the length; in term, 6*s.* 8*d.* less than in vacation. But this is only payable when the exemplification is not made out within a year after the term in which the recovery was suffered. See page 370, note (*c*).

## CXXXIX.

*Bill for amending a Recovery.*

In the Common Pleas.

A., demandant. }  
 B., tenant. }  
 C., vouchee. }

*Michaelmas Term, 1815.*

C. C. Esq. Dr. To W. H.

*Michaelmas Term, 1816.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
It being discovered that the recovery required amending by adding the name of place omitted, attending	-	-	0 13 4
you in conference thereon, and considering who should join in the affidavit	-	-	0 6 8
Instructions for the affidavit	-	-	-
Drawing your and my affidavits of the particular circumstances to shew why the recovery required amending, <i>per</i> 20.	-	-	1 0 0
Copy for counsel to settle	-	-	0 6 8
Writing my agent therewith for him to lay it before counsel	-	-	0 3 6
To Mr. Preston to peruse and settle the draft and clerk	-	-	1 3 6



	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending him therewith and many times afterwards for the same	-	-	-
Carriage thereof from agent	-	0	13 4
Attending you reading over the draft and settling for engrossment	-	0	3 0
Engrossing the affidavit <i>fo.</i> 20 and paper	-	0	6 8
Stamp	-	0	6 10
Attending you reading over the engrossment	-	0	2 8
Attending you before a commissioner on our swearing the affidavit	-	0	6 8
Two oaths	-	0	6 8
Abbreviating the affidavit	-	0	4 0
Drawing observations for counsel on the necessity of the application	-	0	3 4
Copy brief for counsel, <i>four brief sheets</i>	-	0	6 8
Writing agent therewith to lay it before counsel to make the motion	-	0	13 4
Gave Mr. Serjt. Bosanquet with brief and clerk	-	0	3 6
Attending court, but motion did not come on	-	2	4 6
Attending court on the following day when the motion was heard and the court granted an order for making the required amendment	-	0	13 4
	-	1	0 0

	l.	s.	d.
Several attendances on the secondary drawing up the order agreeably to the motion	-	0	6 8
Paid for the order	-	-	1 9 0
Copies for the cursor, <i>custos brevium</i> , prothonotary, and commissioners of the alienation office	-	0	12 0
Attending those officers' getting the amendment made accordingly	-	1	6 8
Paid cursor	-	1	6 8
Paid <i>custos brevium</i>	-	0	9 4
Paid the commissioners at the alien office	-	0	3 4
Paid the prothonotary	-	1	6 8
Paid agent for his attendances and carriage of parcels	-	2	8 8
Petty expenses, &c. (a)	-	0	10 6

(e) The bill for amending the fine is pretty much the same,

## OFFICES

THROUGH WHICH

## FINES AND RECOVERIES

HAVE TO BE PASSED,

*Where kept, and Hours of Attendance.*

---

Cursitor's Office, Rolls Yard.—10 till 2, and 6 till 8,  
in Term time; and 11 till 2 in vacation.

Judge's Chambers, Serjeants' Inn, Chancery Lane.—  
11 till 2, and 6 till 8.

Alienation Office, 7, King's Bench Walk, Temple.—  
11 till 1, and 3 till 5. N.B. In the long vaca-  
tion the Commissioners only attend from 11 till  
12 on Mondays and Wednesdays.

Return Office, at the Prothonotaries', No. 2, Tanfield  
Court, Temple.—11 till 1, and 4 till 8 in Term;  
and 1 till 6 in vacation.

Warrant of Attorney Office, 3, Pump Court, Temple.—  
11 till 2, and 4 till 7, in Term; and 11 till 2,  
and 4 till 6, in vacation.

Custos Brevium, No. 4, Elm Court, Temple.—11 till  
2, and 5 till 7 in Term time, and 11 till 1 in  
vacation.

King's Silver, Elm Court, Temple.—11 till 3.

Chirographer's Office, Middle Temple Lane.—11 till 3.

Clerk of the Recoveries, at the Prothonotaries, 2, Tanfield Court.—11 till 1, and 4 till 8, in Term; and 1 till 6, in vacation.

Seal Office, 3, Inner Temple Lane.—11 till 2, and 5 till 7, in Term, and 11 till 3 in vacation.

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*FINIS.*

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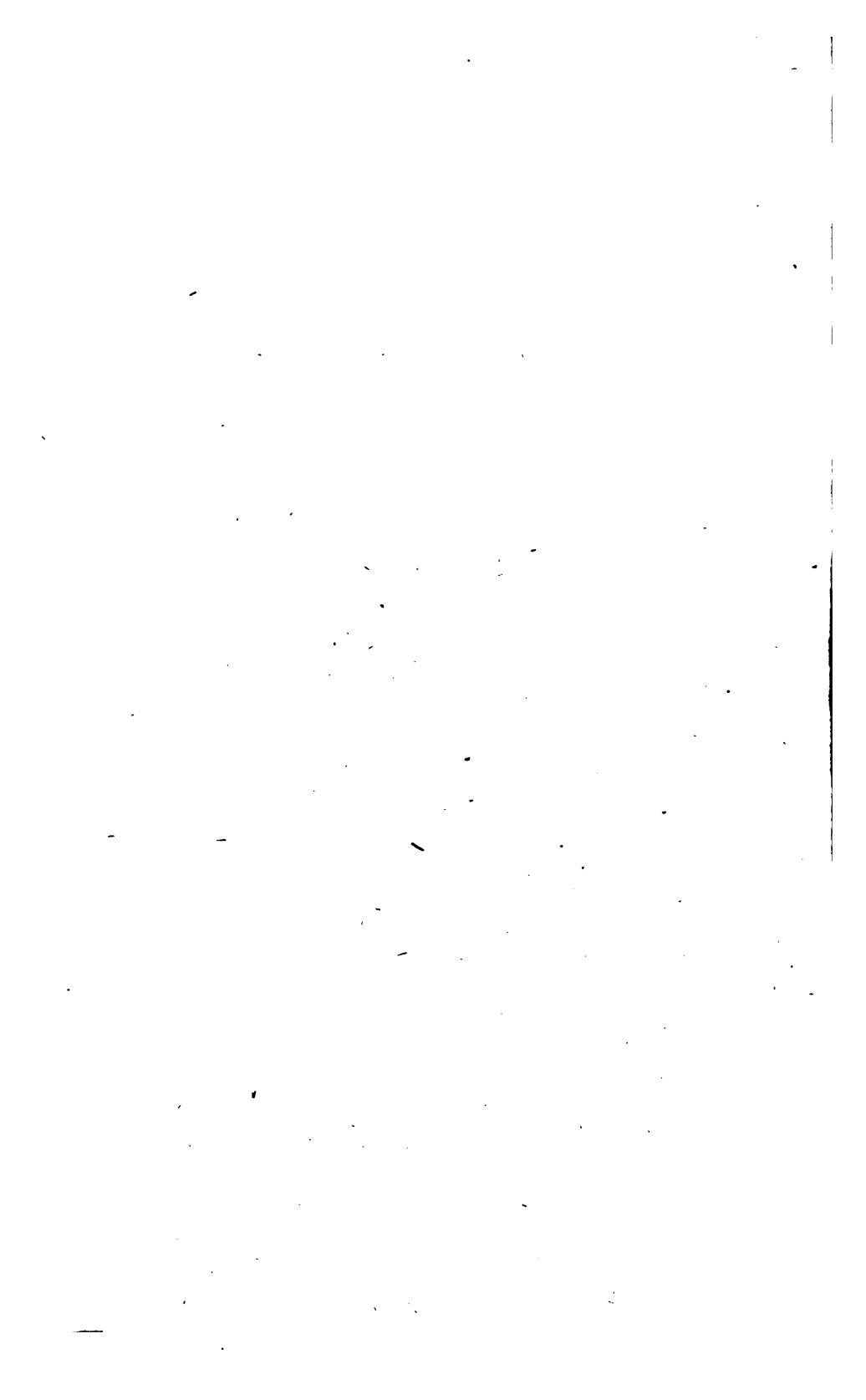
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## ERRATA.

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- PAGE** 2. Note (c). *for* "2 Comm. c. 2." *read* "2 Comm. c. 21."
- 12. Line 6. from the bottom, *for* "proclamation" *read* "proclamations."
- 23. Note (d). *for* "Lacy Williams" *read* "Lacy v. Williams."
- 130. Note (o). *for* "Tuesdays" *read* "Mondays."
- 173. In margin, *for* "seizing" *read* "signing."
- 197. In margin, *for* "officer" *read* "office."



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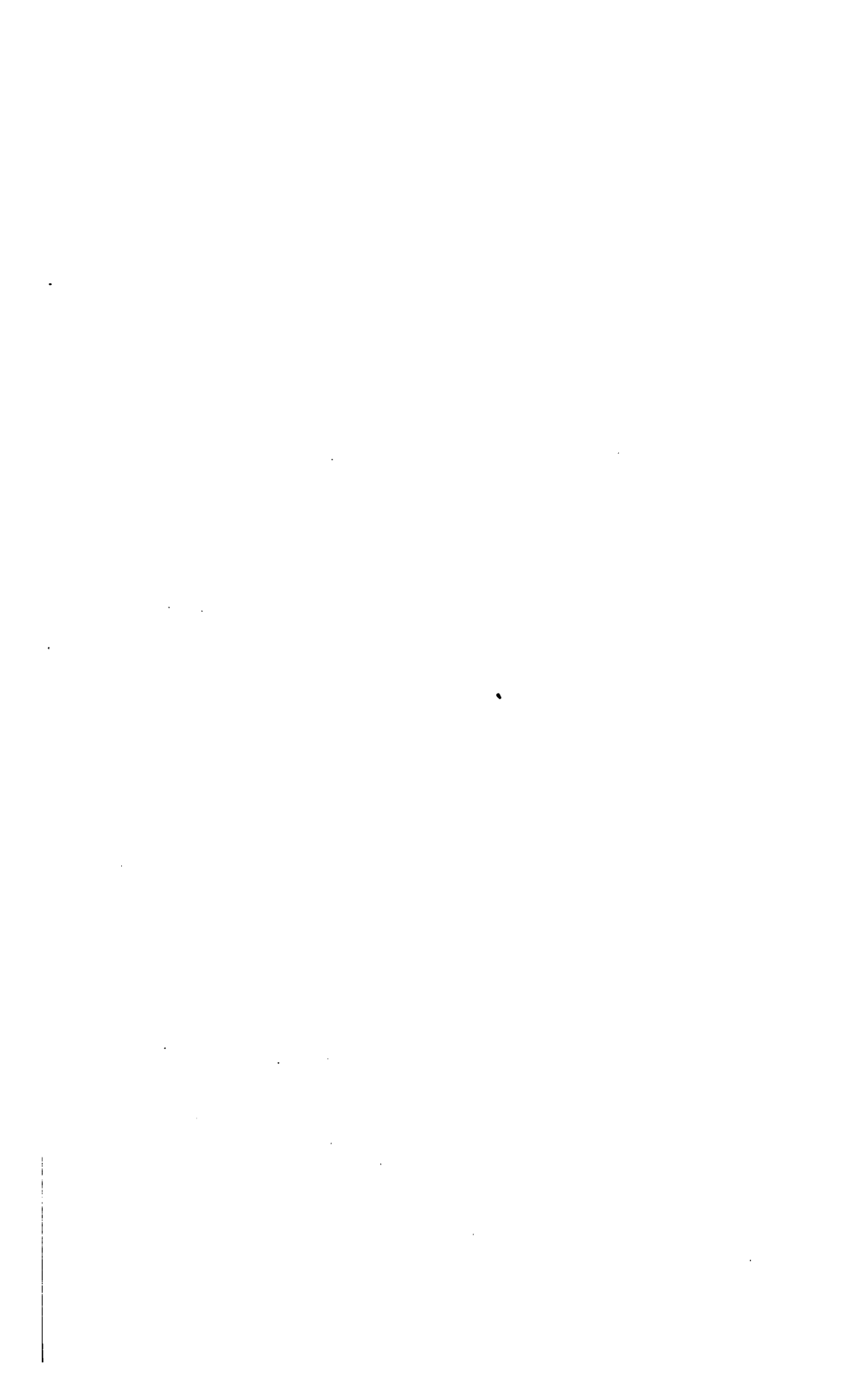


















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